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HOUSE BILL 2136

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State of Washington                      65th Legislature                      2017 Regular Session

By Representatives Taylor, Shea, Griffey, and Holy

Read first time 03/01/17. Referred to Committee on Judiciary.

1            AN ACT Relating to disposition of property subject to forfeiture;  
2 amending RCW 7.40.230, 7.48.090, 7.68.330, 9.41.098, 9.41.098,  
3 9.46.231, 9.68A.120, 9A.56.240, 9A.82.100, 9A.82.110, 9A.88.150,  
4 10.105.010, 19.290.230, 46.61.5058, 69.50.505, 70.77.440, 77.15.070,  
5 82.24.145, 82.26.240, 82.32.670, and 82.38.370; providing effective  
6 dates; and providing an expiration date.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8            **Sec. 1.** RCW 7.40.230 and 2003 c 53 s 5 are each amended to read  
9 as follows:

10            (1) Whenever it appears that any person is engaged in or about to  
11 engage in any act that constitutes or will constitute a violation of  
12 RCW 9.26A.110, 9.26A.115, or 9.26A.090, the prosecuting attorney, a  
13 telecommunications company, or any person harmed by an alleged  
14 violation of RCW 9.26A.110, 9.26A.115, or 9.26A.090 may initiate a  
15 civil proceeding in superior court to enjoin such violation, and may  
16 petition the court to issue an order for the discontinuance of the  
17 specific telephone service being used in violation of RCW 9.26A.110,  
18 9.26A.115, or 9.26A.090.

19            (2) An action under this section shall be brought in the county  
20 in which the unlawful act or acts are alleged to have taken place,

1 and shall be commenced by the filing of a verified complaint, or  
2 shall be accompanied by an affidavit.

3 (3) If it is shown to the satisfaction of the court, either by  
4 verified complaint or affidavit, that a person is engaged in or about  
5 to engage in any act that constitutes a violation of RCW 9.26A.110,  
6 9.26A.115, or 9.26A.090, the court may issue a temporary restraining  
7 order to abate and prevent the continuance or recurrence of the act.  
8 The court may direct the sheriff to seize and retain until further  
9 order of the court any device that is being used in violation of RCW  
10 9.26A.110, 9.26A.115, or 9.26A.090. All property seized pursuant to  
11 the order of the court shall remain in the custody of the court.

12 (4) The court may issue a permanent injunction to restrain, abate  
13 or prevent the continuance or recurrence of the violation of RCW  
14 9.26A.110, 9.26A.115, or 9.26A.090. The court may grant declaratory  
15 relief, mandatory orders, or any other relief deemed necessary to  
16 accomplish the purposes of the injunction. The court may retain  
17 jurisdiction of the case for the purpose of enforcing its orders.

18 (5) If it is shown to the satisfaction of the court, either by  
19 verified complaint or affidavit, that a person is engaged in or is  
20 about to engage in any act that constitutes a violation of RCW  
21 9.26A.110, 9.26A.115, or 9.26A.090, the court may issue an order  
22 which shall be promptly served upon the person in whose name the  
23 telecommunications device is listed, requiring the party, within a  
24 reasonable time, to be fixed by the court, from the time of service  
25 of the petition on the party, to show cause before the judge why  
26 telephone service should not promptly be discontinued. At the hearing  
27 the burden of proof shall be on the complainant.

28 (6) Upon a finding by the court that the telecommunications  
29 device is being used or has been used in violation of RCW 9.26A.110  
30 or 9.26A.115, the court may issue an order requiring the telephone  
31 company which is rendering service over the device to disconnect such  
32 service. Upon receipt of such order, which shall be served upon an  
33 officer of the telephone company by the sheriff or deputy of the  
34 county in which the telecommunications device is installed, the  
35 telephone company shall proceed promptly to disconnect and remove  
36 such device and discontinue all telephone service until further order  
37 of the court, provided that the telephone company may do so without  
38 breach of the peace or trespass.

39 (7) The telecommunications company that petitions the court for  
40 the removal of any telecommunications device under this section shall

1 be a necessary party to any proceeding or action arising out of or  
2 under RCW 9.26A.110 or 9.26A.115.

3 (8) No telephone company shall be liable for any damages,  
4 penalty, or forfeiture, whether civil or criminal, for any legal act  
5 performed in compliance with any order issued by the court.

6 (9) Property seized pursuant to the direction of the court that  
7 the court has determined to have been used in violation of RCW  
8 9.26A.110 or 9.26A.115 shall be forfeited after notice and hearing.  
9 The court may remit or mitigate the forfeiture upon terms and  
10 conditions as the court deems reasonable if it finds that such  
11 forfeiture was incurred without gross negligence or without any  
12 intent of the petitioner to violate the law, or it finds the  
13 existence of such mitigating circumstances as to justify the  
14 remission or the mitigation of the forfeiture. In determining whether  
15 to remit or mitigate forfeiture, the court shall consider losses that  
16 may have been suffered by victims as the result of the use of the  
17 forfeited property.

18 (10) By January 31st of each year, each seizing agency shall  
19 remit to the state treasurer an amount equal to one hundred percent  
20 of the net proceeds of any property forfeited during the preceding  
21 calendar year. Money remitted shall be deposited in the education  
22 legacy trust account under RCW 83.100.230 for common schools. The  
23 value of forfeited property and net proceeds shall be determined in  
24 accordance with RCW 69.50.505(9).

25 **Sec. 2.** RCW 7.48.090 and 1979 c 1 s 18 are each amended to read  
26 as follows:

27 (1) Lewd matter is contraband, and there are no property rights  
28 therein. All personal property declared to be a moral nuisance in RCW  
29 7.48.052 and 7.48.054 and all moneys and other consideration declared  
30 to be a moral nuisance under RCW 7.48.056 are the subject of  
31 forfeiture to the local government and are recoverable as damages in  
32 the county wherein such matter is sold, exhibited, or otherwise used.  
33 Such moneys may be traced to and shall be recoverable from persons  
34 who, under RCW 7.48.064, have knowledge of the nuisance at the time  
35 such moneys are received by them.

36 (2) Upon judgment against the defendants in legal proceedings  
37 brought pursuant to RCW 7.48.050 through 7.48.100 as now or hereafter  
38 amended, an accounting shall be made by such defendant or defendants  
39 of all moneys received by them which have been declared to be a

1 public nuisance under this section. An amount equal to the sum of all  
2 moneys estimated to have been taken in as gross income from such  
3 unlawful commercial activity shall be forfeited to ~~((the general  
4 funds of the city and county governments wherein such matter is sold  
5 or exhibited, to be shared equally,))~~ and deposited in the education  
6 legacy trust account under RCW 83.100.230 for common schools as a  
7 forfeiture of the fruits of an unlawful enterprise and as partial  
8 restitution for damages done to the public welfare, public health,  
9 and public morals.

10 (3) By January 31st of each year, each seizing agency shall remit  
11 to the state treasurer an amount equal to one hundred percent of the  
12 net proceeds of any property forfeited during the preceding calendar  
13 year. Money remitted shall be deposited in the education legacy trust  
14 account under RCW 83.100.230 for common schools. The value of  
15 forfeited property and net proceeds shall be determined in accordance  
16 with RCW 69.50.505(9).

17 (4) Where the action is brought pursuant to RCW 7.48.050 through  
18 7.48.100 as now or hereafter amended, special injury need not be  
19 proven, and the costs of abatement are a lien on both the real and  
20 personal property used in maintaining the nuisance. Costs of  
21 abatement include, but are not limited to the following:

22 ~~((1))~~ (a) Investigative costs;

23 ~~((2))~~ (b) Court costs;

24 ~~((3))~~ (c) Reasonable attorney's fees arising out of the  
25 preparation for and trial of the cause, appeals therefrom, and other  
26 costs allowed on appeal;

27 ~~((4))~~ (d) Printing costs of trial and appellate briefs, and all  
28 other papers filed in such proceedings.

29 **Sec. 3.** RCW 7.68.330 and 1993 c 288 s 6 are each amended to read  
30 as follows:

31 (1) The proceeds of any forfeiture action brought under RCW  
32 7.68.320 shall be distributed as follows:

33 (a) First, to the victim or to the plaintiff in a wrongful death  
34 action brought as a result of the victim's death, to satisfy any  
35 money judgment against the convicted person, or to satisfy any  
36 restitution ordered as part of the convicted person's sentence;

37 (b) Second, to the reasonable legal expenses of bringing the  
38 action;

1 (c) Third, to the (~~crime victims' compensation fund under RCW~~  
2 ~~7.68.090~~) education legacy trust account under RCW 83.100.230 for  
3 common schools.

4 (2) A court may establish such escrow accounts or other  
5 arrangements as it deems necessary and appropriate in order to  
6 distribute proceeds in accordance with this section.

7 **Sec. 4.** RCW 9.41.098 and 2003 c 39 s 5 are each amended to read  
8 as follows:

9 (1) The superior courts and the courts of limited jurisdiction of  
10 the state may order forfeiture of a firearm which is proven to be:

11 (a) Found concealed on a person not authorized by RCW 9.41.060 or  
12 9.41.070 to carry a concealed pistol: PROVIDED, That it is an  
13 absolute defense to forfeiture if the person possessed a valid  
14 Washington concealed pistol license within the preceding two years  
15 and has not become ineligible for a concealed pistol license in the  
16 interim. Before the firearm may be returned, the person must pay the  
17 past due renewal fee and the current renewal fee;

18 (b) Commercially sold to any person without an application as  
19 required by RCW 9.41.090;

20 (c) In the possession of a person prohibited from possessing the  
21 firearm under RCW 9.41.040 or 9.41.045;

22 (d) In the possession or under the control of a person at the  
23 time the person committed or was arrested for committing a felony or  
24 committing a nonfelony crime in which a firearm was used or  
25 displayed;

26 (e) In the possession of a person who is in any place in which a  
27 concealed pistol license is required, and who is under the influence  
28 of any drug or under the influence of intoxicating liquor, as defined  
29 in chapter 46.61 RCW;

30 (f) In the possession of a person free on bail or personal  
31 recognizance pending trial, appeal, or sentencing for a felony or for  
32 a nonfelony crime in which a firearm was used or displayed, except  
33 that violations of Title 77 RCW shall not result in forfeiture under  
34 this section;

35 (g) In the possession of a person found to have been mentally  
36 incompetent while in possession of a firearm when apprehended or who  
37 is thereafter committed pursuant to chapter 10.77 or 71.05 RCW;

38 (h) Used or displayed by a person in the violation of a proper  
39 written order of a court of general jurisdiction; or

1 (i) Used in the commission of a felony or of a nonfelony crime in  
2 which a firearm was used or displayed.

3 (2) Upon order of forfeiture, the court in its discretion may  
4 order destruction of any forfeited firearm. A court may temporarily  
5 retain forfeited firearms needed for evidence.

6 (a) Except as provided in (b), (c), and (d) of this subsection,  
7 firearms that are: (i) Judicially forfeited and no longer needed for  
8 evidence; or (ii) forfeited due to a failure to make a claim under  
9 RCW 63.32.010 or 63.40.010; may be disposed of in any manner  
10 determined by the local legislative authority. Any proceeds of an  
11 auction or trade (~~may be retained by the legislative authority~~)  
12 shall be deposited in the education legacy trust account under RCW  
13 83.100.230 for common schools. This subsection (2)(a) applies only to  
14 firearms that come into the possession of the law enforcement agency  
15 after June 30, 1993.

16 By midnight, June 30, 1993, every law enforcement agency shall  
17 prepare an inventory, under oath, of every firearm that has been  
18 judicially forfeited, has been seized and may be subject to judicial  
19 forfeiture, or that has been, or may be, forfeited due to a failure  
20 to make a claim under RCW 63.32.010 or 63.40.010.

21 (b) Except as provided in (c) of this subsection, of the  
22 inventoried firearms a law enforcement agency shall destroy illegal  
23 firearms, may retain a maximum of ten percent of legal forfeited  
24 firearms for agency use, and shall either:

25 (i) Comply with the provisions for the auction of firearms in RCW  
26 9.41.098 that were in effect immediately preceding May 7, 1993; or

27 (ii) Trade, auction, or arrange for the auction of, rifles and  
28 shotguns. In addition, the law enforcement agency shall either trade,  
29 auction, or arrange for the auction of, short firearms, or shall pay  
30 a fee of twenty-five dollars to the state treasurer for every short  
31 firearm neither auctioned nor traded, to a maximum of fifty thousand  
32 dollars. The fees shall be accompanied by an inventory, under oath,  
33 of every short firearm listed in the inventory required by (a) of  
34 this subsection, that has been neither traded nor auctioned. The  
35 state treasurer shall credit the fees to the firearms range account  
36 established in RCW 79A.25.210. All trades or auctions of firearms  
37 under this subsection shall be to licensed dealers. Proceeds of any  
38 auction less costs, including actual costs of storage and sale, shall  
39 be forwarded to the firearms range account established in RCW  
40 79A.25.210.

1 (c) Antique firearms and firearms recognized as curios, relics,  
2 and firearms of particular historical significance by the United  
3 States treasury department bureau of alcohol, tobacco, ~~((and))~~  
4 firearms and explosives are exempt from destruction and shall be  
5 disposed of by auction or trade to licensed dealers.

6 (d) Firearms in the possession of the Washington state patrol on  
7 or after May 7, 1993, that are judicially forfeited and no longer  
8 needed for evidence, or forfeited due to a failure to make a claim  
9 under RCW 63.35.020, must be disposed of as follows: (i) Firearms  
10 illegal for any person to possess must be destroyed; (ii) the  
11 Washington state patrol may retain a maximum of ten percent of legal  
12 firearms for agency use; and (iii) all other legal firearms must be  
13 auctioned or traded to licensed dealers. ~~((The Washington state  
14 patrol may retain any proceeds of an auction or trade))~~ By January  
15 31st of each year, the Washington state patrol shall remit to the  
16 state treasurer an amount equal to one hundred percent of the net  
17 proceeds of any firearm forfeited during the preceding calendar year.  
18 Money remitted shall be deposited in the education legacy trust  
19 account under RCW 83.100.230 for common schools. The value of  
20 forfeited property and net proceeds shall be determined in accordance  
21 with RCW 69.50.505(9).

22 (3) The court shall order the firearm returned to the owner upon  
23 a showing that there is no probable cause to believe a violation of  
24 subsection (1) of this section existed or the firearm was stolen from  
25 the owner or the owner neither had knowledge of nor consented to the  
26 act or omission involving the firearm which resulted in its  
27 forfeiture.

28 (4) A law enforcement officer of the state or of any county or  
29 municipality may confiscate a firearm found to be in the possession  
30 of a person under circumstances specified in subsection (1) of this  
31 section. After confiscation, the firearm shall not be surrendered  
32 except: (a) To the prosecuting attorney for use in subsequent legal  
33 proceedings; (b) for disposition according to an order of a court  
34 having jurisdiction as provided in subsection (1) of this section; or  
35 (c) to the owner if the proceedings are dismissed or as directed in  
36 subsection (3) of this section.

37 **Sec. 5.** RCW 9.41.098 and 2016 sp.s. c 29 s 281 are each amended  
38 to read as follows:

1 (1) The superior courts and the courts of limited jurisdiction of  
2 the state may order forfeiture of a firearm which is proven to be:

3 (a) Found concealed on a person not authorized by RCW 9.41.060 or  
4 9.41.070 to carry a concealed pistol: PROVIDED, That it is an  
5 absolute defense to forfeiture if the person possessed a valid  
6 Washington concealed pistol license within the preceding two years  
7 and has not become ineligible for a concealed pistol license in the  
8 interim. Before the firearm may be returned, the person must pay the  
9 past due renewal fee and the current renewal fee;

10 (b) Commercially sold to any person without an application as  
11 required by RCW 9.41.090;

12 (c) In the possession of a person prohibited from possessing the  
13 firearm under RCW 9.41.040 or 9.41.045;

14 (d) In the possession or under the control of a person at the  
15 time the person committed or was arrested for committing a felony or  
16 committing a nonfelony crime in which a firearm was used or  
17 displayed;

18 (e) In the possession of a person who is in any place in which a  
19 concealed pistol license is required, and who is under the influence  
20 of any drug or under the influence of intoxicating liquor, as defined  
21 in chapter 46.61 RCW;

22 (f) In the possession of a person free on bail or personal  
23 recognizance pending trial, appeal, or sentencing for a felony or for  
24 a nonfelony crime in which a firearm was used or displayed, except  
25 that violations of Title 77 RCW shall not result in forfeiture under  
26 this section;

27 (g) In the possession of a person found to have been mentally  
28 incompetent while in possession of a firearm when apprehended or who  
29 is thereafter committed pursuant to chapter 10.77 RCW or committed  
30 for mental health treatment under chapter 71.05 RCW;

31 (h) Used or displayed by a person in the violation of a proper  
32 written order of a court of general jurisdiction; or

33 (i) Used in the commission of a felony or of a nonfelony crime in  
34 which a firearm was used or displayed.

35 (2) Upon order of forfeiture, the court in its discretion may  
36 order destruction of any forfeited firearm. A court may temporarily  
37 retain forfeited firearms needed for evidence.

38 (a) Except as provided in (b), (c), and (d) of this subsection,  
39 firearms that are: (i) Judicially forfeited and no longer needed for  
40 evidence; or (ii) forfeited due to a failure to make a claim under

1 RCW 63.32.010 or 63.40.010; may be disposed of in any manner  
2 determined by the local legislative authority. Any proceeds of an  
3 auction or trade (~~may be retained by the legislative authority~~)  
4 shall be deposited in the education legacy trust account under RCW  
5 83.100.230 for common schools. This subsection (2)(a) applies only to  
6 firearms that come into the possession of the law enforcement agency  
7 after June 30, 1993.

8 By midnight, June 30, 1993, every law enforcement agency shall  
9 prepare an inventory, under oath, of every firearm that has been  
10 judicially forfeited, has been seized and may be subject to judicial  
11 forfeiture, or that has been, or may be, forfeited due to a failure  
12 to make a claim under RCW 63.32.010 or 63.40.010.

13 (b) Except as provided in (c) of this subsection, of the  
14 inventoried firearms a law enforcement agency shall destroy illegal  
15 firearms, may retain a maximum of ten percent of legal forfeited  
16 firearms for agency use, and shall either:

17 (i) Comply with the provisions for the auction of firearms in  
18 (~~RCW 9.41.098~~) this section that were in effect immediately  
19 preceding May 7, 1993; or

20 (ii) Trade, auction, or arrange for the auction of, rifles and  
21 shotguns. In addition, the law enforcement agency shall either trade,  
22 auction, or arrange for the auction of, short firearms, or shall pay  
23 a fee of twenty-five dollars to the state treasurer for every short  
24 firearm neither auctioned nor traded, to a maximum of fifty thousand  
25 dollars. The fees shall be accompanied by an inventory, under oath,  
26 of every short firearm listed in the inventory required by (a) of  
27 this subsection, that has been neither traded nor auctioned. The  
28 state treasurer shall credit the fees to the firearms range account  
29 established in RCW 79A.25.210. All trades or auctions of firearms  
30 under this subsection shall be to licensed dealers. Proceeds of any  
31 auction less costs, including actual costs of storage and sale, shall  
32 be forwarded to the firearms range account established in RCW  
33 79A.25.210.

34 (c) Antique firearms and firearms recognized as curios, relics,  
35 and firearms of particular historical significance by the United  
36 States treasury department bureau of alcohol, tobacco, firearms, and  
37 explosives are exempt from destruction and shall be disposed of by  
38 auction or trade to licensed dealers.

39 (d) Firearms in the possession of the Washington state patrol on  
40 or after May 7, 1993, that are judicially forfeited and no longer

1 needed for evidence, or forfeited due to a failure to make a claim  
2 under RCW 63.35.020, must be disposed of as follows: (i) Firearms  
3 illegal for any person to possess must be destroyed; (ii) the  
4 Washington state patrol may retain a maximum of ten percent of legal  
5 firearms for agency use; and (iii) all other legal firearms must be  
6 auctioned or traded to licensed dealers. (~~The Washington state  
7 patrol may retain any proceeds of an auction or trade~~) By January  
8 31st of each year, the Washington state patrol shall remit to the  
9 state treasurer an amount equal to one hundred percent of the net  
10 proceeds of any firearm forfeited during the preceding calendar year.  
11 Money remitted shall be deposited in the education legacy trust  
12 account under RCW 83.100.230 for common schools. The value of  
13 forfeited property and net proceeds shall be determined in accordance  
14 with RCW 69.50.505(9).

15 (3) The court shall order the firearm returned to the owner upon  
16 a showing that there is no probable cause to believe a violation of  
17 subsection (1) of this section existed or the firearm was stolen from  
18 the owner or the owner neither had knowledge of nor consented to the  
19 act or omission involving the firearm which resulted in its  
20 forfeiture.

21 (4) A law enforcement officer of the state or of any county or  
22 municipality may confiscate a firearm found to be in the possession  
23 of a person under circumstances specified in subsection (1) of this  
24 section. After confiscation, the firearm shall not be surrendered  
25 except: (a) To the prosecuting attorney for use in subsequent legal  
26 proceedings; (b) for disposition according to an order of a court  
27 having jurisdiction as provided in subsection (1) of this section; or  
28 (c) to the owner if the proceedings are dismissed or as directed in  
29 subsection (3) of this section.

30 **Sec. 6.** RCW 9.46.231 and 2008 c 6 s 629 are each amended to read  
31 as follows:

32 (1) The following are subject to seizure and forfeiture and no  
33 property right exists in them:

34 (a) All gambling devices as defined in this chapter;

35 (b) All furnishings, fixtures, equipment, and stock, including  
36 without limitation furnishings and fixtures adaptable to nongambling  
37 uses and equipment and stock for printing, recording, computing,  
38 transporting, or safekeeping, used in connection with professional  
39 gambling or maintaining a gambling premises;

1 (c) All conveyances, including aircraft, vehicles, or vessels,  
2 that are used, or intended for use, in any manner to facilitate the  
3 sale, delivery, receipt, or operation of any gambling device, or the  
4 promotion or operation of a professional gambling activity, except  
5 that:

6 (i) A conveyance used by any person as a common carrier in the  
7 transaction of business as a common carrier is not subject to  
8 forfeiture under this section unless it appears that the owner or  
9 other person in charge of the conveyance is a consenting party or  
10 privy to a violation of this chapter;

11 (ii) A conveyance is not subject to forfeiture under this section  
12 by reason of any act or omission established by the owner thereof to  
13 have been committed or omitted without the owner's knowledge or  
14 consent;

15 (iii) A forfeiture of a conveyance encumbered by a bona fide  
16 security interest is subject to the interest of the secured party if  
17 the secured party neither had knowledge of nor consented to the act  
18 or omission; and

19 (iv) If the owner of a conveyance has been arrested under this  
20 chapter the conveyance in which the person is arrested may not be  
21 subject to forfeiture unless it is seized or process is issued for  
22 its seizure within ten days of the owner's arrest;

23 (d) All books, records, and research products and materials,  
24 including formulas, microfilm, tapes, and electronic data that are  
25 used, or intended for use, in violation of this chapter;

26 (e) All moneys, negotiable instruments, securities, or other  
27 tangible or intangible property of value at stake or displayed in or  
28 in connection with professional gambling activity or furnished or  
29 intended to be furnished by any person to facilitate the promotion or  
30 operation of a professional gambling activity;

31 (f) All tangible or intangible personal property, proceeds, or  
32 assets acquired in whole or in part with proceeds traceable to  
33 professional gambling activity and all moneys, negotiable  
34 instruments, and securities used or intended to be used to facilitate  
35 any violation of this chapter. A forfeiture of money, negotiable  
36 instruments, securities, or other tangible or intangible property  
37 encumbered by a bona fide security interest is subject to the  
38 interest of the secured party if, at the time the security interest  
39 was created, the secured party neither had knowledge of nor consented  
40 to the act or omission. Personal property may not be forfeited under

1 this subsection (1)(f), to the extent of the interest of an owner, by  
2 reason of any act or omission that that owner establishes was  
3 committed or omitted without the owner's knowledge or consent; and

4 (g) All real property, including any right, title, and interest  
5 in the whole of any lot or tract of land, and any appurtenances or  
6 improvements that:

7 (i) Have been used with the knowledge of the owner for the  
8 manufacturing, processing, delivery, importing, or exporting of any  
9 illegal gambling equipment, or operation of a professional gambling  
10 activity that would constitute a felony violation of this chapter; or

11 (ii) Have been acquired in whole or in part with proceeds  
12 traceable to a professional gambling activity, if the activity is not  
13 less than a class C felony.

14 Real property forfeited under this chapter that is encumbered by  
15 a bona fide security interest remains subject to the interest of the  
16 secured party if the secured party, at the time the security interest  
17 was created, neither had knowledge of nor consented to the act or  
18 omission. Property may not be forfeited under this subsection, to the  
19 extent of the interest of an owner, by reason of any act or omission  
20 committed or omitted without the owner's knowledge or consent.

21 (2)(a) A law enforcement officer of this state may seize real or  
22 personal property subject to forfeiture under this chapter upon  
23 process issued by any superior court having jurisdiction over the  
24 property. Seizure of real property includes the filing of a lis  
25 pendens by the seizing agency. Real property seized under this  
26 section may not be transferred or otherwise conveyed until ninety  
27 days after seizure or until a judgment of forfeiture is entered,  
28 whichever is later, but real property seized under this section may  
29 be transferred or conveyed to any person or entity who acquires title  
30 by foreclosure or deed in lieu of foreclosure of a bona fide security  
31 interest.

32 (b) Seizure of personal property without process may be made if:

33 (i) The seizure is incident to an arrest or a search under a  
34 search warrant or an inspection under an administrative inspection  
35 warrant;

36 (ii) The property subject to seizure has been the subject of a  
37 prior judgment in favor of the state in a criminal injunction or  
38 forfeiture proceeding based upon this chapter;

1 (iii) A law enforcement officer has probable cause to believe  
2 that the property is directly or indirectly dangerous to health or  
3 safety; or

4 (iv) The law enforcement officer has probable cause to believe  
5 that the property was used or is intended to be used in violation of  
6 this chapter.

7 (3) In the event of seizure under subsection (2) of this section,  
8 proceedings for forfeiture are deemed commenced by the seizure. The  
9 law enforcement agency under whose authority the seizure was made  
10 shall cause notice to be served within fifteen days following the  
11 seizure on the owner of the property seized and the person in charge  
12 thereof and any person having any known right or interest therein,  
13 including any community property interest, of the seizure and  
14 intended forfeiture of the seized property. Service of notice of  
15 seizure of real property must be made according to the rules of civil  
16 procedure. However, the state may not obtain a default judgment with  
17 respect to real property against a party who is served by substituted  
18 service absent an affidavit stating that a good faith effort has been  
19 made to ascertain if the defaulted party is incarcerated within the  
20 state, and that there is no present basis to believe that the party  
21 is incarcerated within the state. Notice of seizure in the case of  
22 property subject to a security interest that has been perfected by  
23 filing a financing statement in accordance with chapter 62A.9A RCW,  
24 or a certificate of title, must be made by service upon the secured  
25 party or the secured party's assignee at the address shown on the  
26 financing statement or the certificate of title. The notice of  
27 seizure in other cases may be served by any method authorized by law  
28 or court rule including but not limited to service by certified mail  
29 with return receipt requested. Service by mail is deemed complete  
30 upon mailing within the fifteen-day period following the seizure.

31 (4) If no person notifies the seizing law enforcement agency in  
32 writing of the person's claim of ownership or right to possession of  
33 items specified in subsection (1) of this section within forty-five  
34 days of the seizure in the case of personal property and ninety days  
35 in the case of real property, the item seized is deemed forfeited.  
36 The community property interest in real property of a person whose  
37 spouse or domestic partner committed a violation giving rise to  
38 seizure of the real property may not be forfeited if the person did  
39 not participate in the violation.

1 (5) If any person notifies the seizing law enforcement agency in  
2 writing of the person's claim of ownership or right to possession of  
3 items specified in subsection (1) of this section within forty-five  
4 days of the seizure in the case of personal property and ninety days  
5 in the case of real property, the person or persons must be afforded  
6 a reasonable opportunity to be heard as to the claim or right. The  
7 hearing must be before the chief law enforcement officer of the  
8 seizing agency or the chief law enforcement officer's designee,  
9 except if the seizing agency is a state agency as defined in RCW  
10 34.12.020(4), the hearing must be before the chief law enforcement  
11 officer of the seizing agency or an administrative law judge  
12 appointed under chapter 34.12 RCW, except that any person asserting a  
13 claim or right may remove the matter to a court of competent  
14 jurisdiction. Removal of any matter involving personal property may  
15 only be accomplished according to the rules of civil procedure. The  
16 person seeking removal of the matter must serve process against the  
17 state, county, political subdivision, or municipality that operates  
18 the seizing agency, and any other party of interest, in accordance  
19 with RCW 4.28.080 or 4.92.020, within forty-five days after the  
20 person seeking removal has notified the seizing law enforcement  
21 agency of the person's claim of ownership or right to possession. The  
22 court to which the matter is to be removed must be the district court  
23 if the aggregate value of personal property is within the  
24 jurisdictional limit set forth in RCW 3.66.020. A hearing before the  
25 seizing agency and any appeal therefrom must be under Title 34 RCW.  
26 In a court hearing between two or more claimants to the article or  
27 articles involved, the prevailing party is entitled to a judgment for  
28 costs and reasonable attorneys' fees. In cases involving personal  
29 property, the burden of producing evidence is upon the person  
30 claiming to be the lawful owner or the person claiming to have the  
31 lawful right to possession of the property. In cases involving  
32 property seized under subsection (1)(a) of this section, the only  
33 issues to be determined by the tribunal are whether the item seized  
34 is a gambling device, and whether the device is an antique device as  
35 defined by RCW 9.46.235. In cases involving real property, the burden  
36 of producing evidence is upon the law enforcement agency. The burden  
37 of proof that the seized real property is subject to forfeiture is  
38 upon the law enforcement agency. The seizing law enforcement agency  
39 shall promptly return the article or articles to the claimant upon a  
40 final determination by the administrative law judge or court that the

1 claimant is the present lawful owner or is lawfully entitled to  
2 possession thereof of items specified in subsection (1) of this  
3 section.

4 (6) If property is forfeited under this chapter the seizing law  
5 enforcement agency may:

6 (a) Retain it for official use or upon application by any law  
7 enforcement agency of this state release the property to the agency  
8 for training or use in enforcing this chapter;

9 (b) Sell that which is not required to be destroyed by law and  
10 which is not harmful to the public; or

11 (c) Destroy any articles that may not be lawfully possessed  
12 within the state of Washington, or that have a fair market value of  
13 less than one hundred dollars.

14 (7)(a) If property is forfeited, the seizing agency shall keep a  
15 record indicating the identity of the prior owner, if known, a  
16 description of the property, the disposition of the property, the  
17 value of the property at the time of seizure, and the amount of  
18 proceeds realized from disposition of the property. The net proceeds  
19 of forfeited property is the value of the forfeitable interest in the  
20 property after deducting the cost of satisfying any bona fide  
21 security interest to which the property is subject at the time of  
22 seizure, and in the case of sold property, after deducting the cost  
23 of sale, including reasonable fees or commissions paid to independent  
24 selling agents.

25 (b) Each seizing agency shall retain records of forfeited  
26 property for at least seven years.

27 (c) By January 31st of each year, each seizing agency shall remit  
28 to the state treasurer an amount equal to one hundred percent of the  
29 net proceeds of any property forfeited during the preceding calendar  
30 year. Money remitted shall be deposited in the education legacy trust  
31 account under RCW 83.100.230 for common schools. The value of  
32 forfeited property and net proceeds shall be determined in accordance  
33 with RCW 69.50.505(9).

34 (8) The seizing law enforcement agency shall retain forfeited  
35 property (~~and net proceeds~~) exclusively for the expansion and  
36 improvement of gambling-related law enforcement activity. (~~Money~~)  
37 Forfeited property retained under this section may not be used to  
38 supplant preexisting funding sources.

39 (9) Gambling devices that are possessed, transferred, sold, or  
40 offered for sale in violation of this chapter are contraband and must

1 be seized and summarily forfeited to the state. Gambling equipment  
2 that is seized or comes into the possession of a law enforcement  
3 agency, the owners of which are unknown, are contraband and must be  
4 summarily forfeited to the state.

5 (10) Upon the entry of an order of forfeiture of real property,  
6 the court shall forward a copy of the order to the assessor of the  
7 county in which the property is located. The superior court shall  
8 enter orders for the forfeiture of real property, subject to court  
9 rules. The seizing agency shall file such an order in the county  
10 auditor's records in the county in which the real property is  
11 located.

12 (11)(a) A landlord may assert a claim against proceeds from the  
13 sale of assets seized and forfeited under subsection (6)(b) of this  
14 section, only if:

15 (i) A law enforcement officer, while acting in his or her  
16 official capacity, directly caused damage to the complaining  
17 landlord's property while executing a search of a tenant's residence;  
18 and

19 (ii) The landlord has applied any funds remaining in the tenant's  
20 deposit, to which the landlord has a right under chapter 59.18 RCW,  
21 to cover the damage directly caused by a law enforcement officer  
22 before asserting a claim under this section.

23 (A) Only if the funds applied under (a)(ii) of this subsection  
24 are insufficient to satisfy the damage directly caused by a law  
25 enforcement officer, may the landlord seek compensation for the  
26 damage by filing a claim against the governmental entity under whose  
27 authority the law enforcement agency operates within thirty days  
28 after the search; and

29 (B) Only if the governmental entity denies or fails to respond to  
30 the landlord's claim within sixty days of the date of filing, may the  
31 landlord collect damages under this subsection by filing within  
32 thirty days of denial or the expiration of the sixty-day period,  
33 whichever occurs first, a claim with the seizing law enforcement  
34 agency. The seizing law enforcement agency shall notify the landlord  
35 of the status of the claim by the end of the thirty-day period. This  
36 section does not require the claim to be paid by the end of the  
37 sixty-day or thirty-day period.

38 (b) For any claim filed under (a)(ii) of this subsection, the law  
39 enforcement agency shall pay the claim unless the agency provides  
40 substantial proof that the landlord either:

1 (i) Knew or consented to actions of the tenant in violation of  
2 this chapter; or

3 (ii) Failed to respond to a notification of the illegal activity,  
4 provided by a law enforcement agency within seven days of receipt of  
5 notification of the illegal activity.

6 (12) The landlord's claim for damages under subsection (11) of  
7 this section may not include a claim for loss of business and is  
8 limited to:

9 (a) Damage to tangible property and clean-up costs;

10 (b) The lesser of the cost of repair or fair market value of the  
11 damage directly caused by a law enforcement officer;

12 (c) The proceeds from the sale of the specific tenant's property  
13 seized and forfeited under subsection (6)(b) of this section; and

14 (d) The proceeds available after the seizing law enforcement  
15 agency satisfies any bona fide security interest in the tenant's  
16 property and costs related to sale of the tenant's property as  
17 provided by subsection (7)(a) of this section.

18 (13) Subsections (11) and (12) of this section do not limit any  
19 other rights a landlord may have against a tenant to collect for  
20 damages. However, if a law enforcement agency satisfies a landlord's  
21 claim under subsection (11) of this section, the rights the landlord  
22 has against the tenant for damages directly caused by a law  
23 enforcement officer under the terms of the landlord and tenant's  
24 contract are subrogated to the law enforcement agency.

25 (14) Liability is not imposed by this section upon any authorized  
26 state, county, or municipal officer, including a commission special  
27 agent, in the lawful performance of his or her duties.

28 **Sec. 7.** RCW 9.68A.120 and 2014 c 188 s 3 are each amended to  
29 read as follows:

30 The following are subject to seizure and forfeiture:

31 (1) All visual or printed matter that depicts a minor engaged in  
32 sexually explicit conduct.

33 (2) All raw materials, equipment, and other tangible personal  
34 property of any kind used or intended to be used to manufacture or  
35 process any visual or printed matter that depicts a minor engaged in  
36 sexually explicit conduct, and all conveyances, including aircraft,  
37 vehicles, or vessels that are used or intended for use to transport,  
38 or in any manner to facilitate the transportation of, visual or  
39 printed matter in violation of RCW 9.68A.050 or 9.68A.060, but:

1 (a) No conveyance used by any person as a common carrier in the  
2 transaction of business as a common carrier is subject to forfeiture  
3 under this section unless it appears that the owner or other person  
4 in charge of the conveyance is a consenting party or privy to a  
5 violation of this chapter;

6 (b) No property is subject to forfeiture under this section by  
7 reason of any act or omission established by the owner of the  
8 property to have been committed or omitted without the owner's  
9 knowledge or consent;

10 (c) A forfeiture of property encumbered by a bona fide security  
11 interest is subject to the interest of the secured party if the  
12 secured party neither had knowledge of nor consented to the act or  
13 omission; and

14 (d) When the owner of a conveyance has been arrested under this  
15 chapter the conveyance may not be subject to forfeiture unless it is  
16 seized or process is issued for its seizure within ten days of the  
17 owner's arrest.

18 (3) All personal property, moneys, negotiable instruments,  
19 securities, or other tangible or intangible property furnished or  
20 intended to be furnished by any person in exchange for visual or  
21 printed matter depicting a minor engaged in sexually explicit  
22 conduct, or constituting proceeds traceable to any violation of this  
23 chapter.

24 (4) Property subject to forfeiture under this chapter may be  
25 seized by any law enforcement officer of this state upon process  
26 issued by any superior court having jurisdiction over the property.  
27 Seizure without process may be made if:

28 (a) The seizure is incident to an arrest or a search under a  
29 search warrant or an inspection under an administrative inspection  
30 warrant;

31 (b) The property subject to seizure has been the subject of a  
32 prior judgment in favor of the state in a criminal injunction or  
33 forfeiture proceeding based upon this chapter;

34 (c) A law enforcement officer has probable cause to believe that  
35 the property is directly or indirectly dangerous to health or safety;  
36 or

37 (d) The law enforcement officer has probable cause to believe  
38 that the property was used or is intended to be used in violation of  
39 this chapter.

1 (5) In the event of seizure under subsection (4) of this section,  
2 proceedings for forfeiture shall be deemed commenced by the seizure.  
3 The law enforcement agency under whose authority the seizure was made  
4 shall cause notice to be served within fifteen days following the  
5 seizure on the owner of the property seized and the person in charge  
6 thereof and any person having any known right or interest therein, of  
7 the seizure and intended forfeiture of the seized property. The  
8 notice may be served by any method authorized by law or court rule  
9 including but not limited to service by certified mail with return  
10 receipt requested. Service by mail shall be deemed complete upon  
11 mailing within the fifteen day period following the seizure.

12 (6) If no person notifies the seizing law enforcement agency in  
13 writing of the person's claim of ownership or right to possession of  
14 seized items within forty-five days of the seizure, the item seized  
15 shall be deemed forfeited.

16 (7) If any person notifies the seizing law enforcement agency in  
17 writing of the person's claim of ownership or right to possession of  
18 seized items within forty-five days of the seizure, the person or  
19 persons shall be afforded a reasonable opportunity to be heard as to  
20 the claim or right. The hearing shall be before an administrative law  
21 judge appointed under chapter 34.12 RCW, except that any person  
22 asserting a claim or right may remove the matter to a court of  
23 competent jurisdiction if the aggregate value of the article or  
24 articles involved is more than five hundred dollars. The hearing  
25 before an administrative law judge and any appeal therefrom shall be  
26 under Title 34 RCW. In a court hearing between two or more claimants  
27 to the article or articles involved, the prevailing party shall be  
28 entitled to a judgment for costs and reasonable attorney's fees. The  
29 burden of producing evidence shall be upon the person claiming to be  
30 the lawful owner or the person claiming to have the lawful right to  
31 possession of the seized items. The seizing law enforcement agency  
32 shall promptly return the article or articles to the claimant upon a  
33 determination by the administrative law judge or court that the  
34 claimant is lawfully entitled to possession thereof of the seized  
35 items.

36 (8) If property is sought to be forfeited on the ground that it  
37 constitutes proceeds traceable to a violation of this chapter, the  
38 seizing law enforcement agency must prove by a preponderance of the  
39 evidence that the property constitutes proceeds traceable to a  
40 violation of this chapter.

1 (9) When property is forfeited under this chapter the seizing law  
2 enforcement agency may:

3 (a) Retain it for official use or upon application by any law  
4 enforcement agency of this state release the property to that agency  
5 for the exclusive use of enforcing this chapter or chapter 9A.88 RCW;

6 (b) Sell that which is not required to be destroyed by law and  
7 which is not harmful to the public; or

8 (c) Request the appropriate sheriff or director of public safety  
9 to take custody of the property and remove it for disposition in  
10 accordance with law.

11 (10)(a) By January 31st of each year, each seizing agency shall  
12 remit to the state treasurer an amount equal to (~~ten~~) one hundred  
13 percent of the net proceeds of any property forfeited during the  
14 preceding calendar year. Money remitted shall be deposited in the  
15 (~~prostitution prevention and intervention~~) education legacy trust  
16 account under RCW (~~43.63A.740~~) 83.100.230 for common schools.

17 (b) The net proceeds of forfeited property is the value of the  
18 forfeitable interest in the property after deducting the cost of  
19 satisfying any bona fide security interest to which the property is  
20 subject at the time of seizure; and in the case of sold property,  
21 after deducting the cost of sale, including reasonable fees or  
22 commissions paid to an independent selling agency.

23 (c) The value of sold forfeited property is the sale price. The  
24 value of retained forfeited property is the fair market value of the  
25 property at the time of seizure determined when possible by reference  
26 to an applicable commonly used index. A seizing agency may use, but  
27 need not use, an independent qualified appraiser to determine the  
28 value of retained property. If an appraiser is used, the value of the  
29 property appraised is net of the cost of the appraisal. The value of  
30 destroyed property and retained firearms or illegal property is zero.

31 (11) Forfeited property (~~and net proceeds not required to be~~  
32 ~~paid to the state treasurer under this chapter shall be used for~~  
33 ~~payment of all proper expenses of the investigation leading to the~~  
34 ~~seizure, including any money delivered to the subject of the~~  
35 ~~investigation by the law enforcement agency, and of the proceedings~~  
36 ~~for forfeiture and sale, including expenses of seizure, maintenance~~  
37 ~~of custody, advertising, actual costs of the prosecuting or city~~  
38 ~~attorney, and court costs. Money remaining after payment of these~~  
39 ~~expenses~~) retained shall be (~~retained~~) used by the seizing law

1 enforcement agency for the exclusive use of enforcing the provisions  
2 of this chapter or chapter 9A.88 RCW.

3 **Sec. 8.** RCW 9A.56.240 and 1985 c 430 s 3 are each amended to  
4 read as follows:

5 (1) Upon conviction of theft or unlawful sale of cable television  
6 services and upon motion and hearing, the court shall order the  
7 forfeiture of any decoder, descrambler, or other device used in  
8 committing the violation of RCW 9A.56.220 or 9A.56.230 as contraband  
9 and dispose of it at the court's discretion.

10 (2) By January 31st of each year, each seizing agency shall remit  
11 to the state treasurer an amount equal to one hundred percent of the  
12 net proceeds of any property forfeited during the preceding calendar  
13 year. Money remitted shall be deposited in the education legacy trust  
14 account under RCW 83.100.230 for common schools. The value of  
15 forfeited property and net proceeds shall be determined in accordance  
16 with RCW 69.50.505(9).

17 **Sec. 9.** RCW 9A.82.100 and 2012 c 139 s 2 are each amended to  
18 read as follows:

19 (1)(a) A person who sustains injury to his or her person,  
20 business, or property by an act of criminal profiteering that is part  
21 of a pattern of criminal profiteering activity, or by an offense  
22 defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, or by a  
23 violation of RCW 9A.82.060 or 9A.82.080 may file an action in  
24 superior court for the recovery of damages and the costs of the suit,  
25 including reasonable investigative and attorney's fees.

26 (b) The attorney general or county prosecuting attorney may file  
27 an action: (i) On behalf of those persons injured or, respectively,  
28 on behalf of the state or county if the entity has sustained damages,  
29 or (ii) to prevent, restrain, or remedy a pattern of criminal  
30 profiteering activity, or an offense defined in RCW 9A.40.100,  
31 9.68A.100, 9.68A.101, or 9A.88.070, or a violation of RCW 9A.82.060  
32 or 9A.82.080.

33 (c) An action for damages filed by or on behalf of an injured  
34 person, the state, or the county shall be for the recovery of damages  
35 and the costs of the suit, including reasonable investigative and  
36 attorney's fees.

37 (d) In an action filed to prevent, restrain, or remedy a pattern  
38 of criminal profiteering activity, or an offense defined in RCW

1 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, or a violation of RCW  
2 9A.82.060 or 9A.82.080, the court, upon proof of the violation, may  
3 impose a civil penalty not exceeding two hundred fifty thousand  
4 dollars, in addition to awarding the cost of the suit, including  
5 reasonable investigative and attorney's fees.

6 (2) The superior court has jurisdiction to prevent, restrain, and  
7 remedy a pattern of criminal profiteering, or an offense defined in  
8 RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, or a violation of  
9 RCW 9A.82.060 or 9A.82.080 after making provision for the rights of  
10 all innocent persons affected by the violation and after hearing or  
11 trial, as appropriate, by issuing appropriate orders.

12 (3) Prior to a determination of liability, orders issued under  
13 subsection (2) of this section may include, but are not limited to,  
14 entering restraining orders or prohibitions or taking such other  
15 actions, including the acceptance of satisfactory performance bonds,  
16 in connection with any property or other interest subject to damages,  
17 forfeiture, or other restraints pursuant to this section as the court  
18 deems proper. The orders may also include attachment, receivership,  
19 or injunctive relief in regard to personal or real property pursuant  
20 to Title 7 RCW. In shaping the reach or scope of receivership,  
21 attachment, or injunctive relief, the superior court shall provide  
22 for the protection of bona fide interests in property, including  
23 community property, of persons who were not involved in the violation  
24 of this chapter, except to the extent that such interests or property  
25 were acquired or used in such a way as to be subject to forfeiture  
26 under RCW 9A.82.100(4)(f).

27 (4) Following a determination of liability, orders may include,  
28 but are not limited to:

29 (a) Ordering any person to divest himself or herself of any  
30 interest, direct or indirect, in any enterprise.

31 (b) Imposing reasonable restrictions on the future activities or  
32 investments of any person, including prohibiting any person from  
33 engaging in the same type of endeavor as the enterprise engaged in,  
34 the activities of which affect the laws of this state, to the extent  
35 the Constitutions of the United States and this state permit.

36 (c) Ordering dissolution or reorganization of any enterprise.

37 (d) Ordering the payment of actual damages sustained to those  
38 persons injured by a violation of RCW 9A.82.060 or 9A.82.080, or an  
39 offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070,  
40 or an act of criminal profiteering that is part of a pattern of

1 criminal profiteering, and in the court's discretion, increasing the  
2 payment to an amount not exceeding three times the actual damages  
3 sustained.

4 (e) Ordering the payment of all costs and expenses of the  
5 prosecution and investigation of a pattern of criminal profiteering,  
6 or an offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or  
7 9A.88.070, activity or a violation of RCW 9A.82.060 or 9A.82.080,  
8 civil and criminal, incurred by the state or county, including any  
9 costs of defense provided at public expense, as appropriate to the  
10 state general fund or the antiprofitteering revolving fund of the  
11 county.

12 (f) Ordering forfeiture first as restitution to any person  
13 damaged by an act of criminal profiteering that is part of a pattern  
14 of criminal profiteering, or by an offense defined in RCW 9A.40.100,  
15 then to the state general fund or antiprofitteering revolving fund of  
16 the county, as appropriate, to the extent not already ordered to be  
17 paid in other damages, of the following:

18 (i) Any property or other interest acquired or maintained in  
19 violation of RCW 9A.82.060 or 9A.82.080 to the extent of the  
20 investment of funds, and any appreciation or income attributable to  
21 the investment, from a violation of RCW 9A.82.060 or 9A.82.080.

22 (ii) Any property, contractual right, or claim against property  
23 used to influence any enterprise that a person has established,  
24 operated, controlled, conducted, or participated in the conduct of,  
25 in violation of RCW 9A.82.060 or 9A.82.080.

26 (iii) All proceeds traceable to or derived from an offense  
27 included in the pattern of criminal profiteering activity, or an  
28 offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070,  
29 and all moneys, negotiable instruments, securities, and other things  
30 of value significantly used or intended to be used significantly to  
31 facilitate commission of the offense.

32 (g) Ordering payment to the state general fund or  
33 antiprofitteering revolving fund of the county, as appropriate, of an  
34 amount equal to the gain a person has acquired or maintained through  
35 an offense included in the definition of criminal profiteering.

36 (5) In addition to or in lieu of an action under this section,  
37 the attorney general or county prosecuting attorney may file an  
38 action for forfeiture to the (~~state general fund or antiprofitteering~~  
39 ~~revolving fund of the county~~) education legacy trust account under

1 RCW 83.100.230 for common schools, as appropriate, to the extent not  
2 already ordered paid pursuant to this section, of the following:

3 (a) Any interest acquired or maintained by a person in violation  
4 of RCW 9A.82.060 or 9A.82.080 to the extent of the investment of  
5 funds obtained from a violation of RCW 9A.82.060 or 9A.82.080 and any  
6 appreciation or income attributable to the investment.

7 (b) Any property, contractual right, or claim against property  
8 used to influence any enterprise that a person has established,  
9 operated, controlled, conducted, or participated in the conduct of,  
10 in violation of RCW 9A.82.060 or 9A.82.080.

11 (c) All proceeds traceable to or derived from an offense included  
12 in the pattern of criminal profiteering activity, or an offense  
13 defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, and all  
14 moneys, negotiable instruments, securities, and other things of value  
15 significantly used or intended to be used significantly to facilitate  
16 the commission of the offense.

17 (6) A defendant convicted in any criminal proceeding is precluded  
18 in any civil proceeding from denying the essential allegations of the  
19 criminal offense proven in the criminal trial in which the defendant  
20 was convicted. For the purposes of this subsection, a conviction  
21 shall be deemed to have occurred upon a verdict, finding, or plea of  
22 guilty, notwithstanding the fact that appellate review of the  
23 conviction and sentence has been or may be sought. If a subsequent  
24 reversal of the conviction occurs, any judgment that was based upon  
25 that conviction may be reopened upon motion of the defendant.

26 (7) The initiation of civil proceedings under this section shall  
27 be commenced within three years after discovery of the pattern of  
28 criminal profiteering activity or after the pattern should reasonably  
29 have been discovered or, in the case of an offense that is defined in  
30 RCW 9A.40.100, within three years after the final disposition of any  
31 criminal charges relating to the offense, whichever is later.

32 (8) The attorney general or county prosecuting attorney may, in a  
33 civil action brought pursuant to this section, file with the clerk of  
34 the superior court a certificate stating that the case is of special  
35 public importance. A copy of that certificate shall be furnished  
36 immediately by the clerk to the presiding chief judge of the superior  
37 court in which the action is pending and, upon receipt of the copy,  
38 the judge shall immediately designate a judge to hear and determine  
39 the action. The judge so designated shall promptly assign the action

1 for hearing, participate in the hearings and determination, and cause  
2 the action to be expedited.

3 (9) The standard of proof in actions brought pursuant to this  
4 section is the preponderance of the evidence test.

5 (10) A person other than the attorney general or county  
6 prosecuting attorney who files an action under this section shall  
7 serve notice and one copy of the pleading on the attorney general  
8 within thirty days after the action is filed with the superior court.  
9 The notice shall identify the action, the person, and the person's  
10 attorney. Service of the notice does not limit or otherwise affect  
11 the right of the state to maintain an action under this section or  
12 intervene in a pending action nor does it authorize the person to  
13 name the state or the attorney general as a party to the action.

14 (11) Except in cases filed by a county prosecuting attorney, the  
15 attorney general may, upon timely application, intervene in any civil  
16 action or proceeding brought under this section if the attorney  
17 general certifies that in the attorney general's opinion the action  
18 is of special public importance. Upon intervention, the attorney  
19 general may assert any available claim and is entitled to the same  
20 relief as if the attorney general had instituted a separate action.

21 (12) In addition to the attorney general's right to intervene as  
22 a party in any action under this section, the attorney general may  
23 appear as amicus curiae in any proceeding in which a claim under this  
24 section has been asserted or in which a court is interpreting RCW  
25 9A.82.010, 9A.82.080, 9A.82.090, 9A.82.110, or 9A.82.120, or this  
26 section.

27 (13) A private civil action under this section does not limit any  
28 other civil or criminal action under this chapter or any other  
29 provision. Private civil remedies provided under this section are  
30 supplemental and not mutually exclusive.

31 (14) Upon motion by the defendant, the court may authorize the  
32 sale or transfer of assets subject to an order or lien authorized by  
33 this chapter for the purpose of paying actual attorney's fees and  
34 costs of defense. The motion shall specify the assets for which sale  
35 or transfer is sought and shall be accompanied by the defendant's  
36 sworn statement that the defendant has no other assets available for  
37 such purposes. No order authorizing such sale or transfer may be  
38 entered unless the court finds that the assets involved are not  
39 subject to possible forfeiture under RCW 9A.82.100(4)(f). Prior to  
40 disposition of the motion, the court shall notify the state of the

1 assets sought to be sold or transferred and shall hear argument on  
2 the issue of whether the assets are subject to forfeiture under RCW  
3 9A.82.100(4)(f). Such a motion may be made from time to time and  
4 shall be heard by the court on an expedited basis.

5 (15) In an action brought under subsection (1)(a) and (b)(i) of  
6 this section, either party has the right to a jury trial.

7 **Sec. 10.** RCW 9A.82.110 and 2010 c 122 s 4 are each amended to  
8 read as follows:

9 (1) In an action brought by the attorney general on behalf of the  
10 state under RCW 9A.82.100(1)(b)(i) in which the state prevails, any  
11 payments ordered in excess of the actual damages sustained shall be  
12 deposited in the crime victims' compensation account provided in RCW  
13 7.68.045.

14 (2)(a) The county legislative authority may establish an  
15 antiprofitteering revolving fund to be administered by the county  
16 prosecuting attorney under the conditions and for the purposes  
17 provided by this subsection. Disbursements from the fund shall be on  
18 authorization of the county prosecuting attorney. No appropriation is  
19 required for disbursements.

20 (b) Any prosecution and investigation costs, including attorney's  
21 fees, recovered for the state by the county prosecuting attorney as a  
22 result of enforcement of civil and criminal statutes pertaining to  
23 any offense included in the definition of criminal profiteering,  
24 whether by final judgment, settlement, or otherwise, shall be  
25 deposited, as directed by a court of competent jurisdiction, in the  
26 fund established by this subsection. In an action brought by a  
27 prosecuting attorney on behalf of the county under RCW  
28 9A.82.100(1)(b)(i) in which the county prevails, any payments ordered  
29 in excess of the actual damages sustained shall be deposited in the  
30 crime victims' compensation account provided in RCW 7.68.045.

31 (c) The county legislative authority may prescribe a maximum  
32 level of moneys in the antiprofitteering revolving fund. Moneys  
33 exceeding the prescribed maximum shall be transferred to the county  
34 current expense fund.

35 (d) The moneys in the fund shall be used by the county  
36 prosecuting attorney for the investigation and prosecution of any  
37 offense, within the jurisdiction of the county prosecuting attorney,  
38 included in the definition of criminal profiteering, including civil  
39 enforcement.

1 (e) If a county has not established an antiprofitereering revolving  
2 fund, any payments ((~~or forfeitures~~)) ordered to the county under  
3 this chapter shall be deposited to the county current expense fund.  
4 By January 31st of each year, each seizing agency shall remit to the  
5 state treasurer an amount equal to one hundred percent of the net  
6 proceeds of any property forfeited under this chapter during the  
7 preceding calendar year. Money remitted shall be deposited in the  
8 education legacy trust account under RCW 83.100.230 for common  
9 schools. The value of forfeited property and net proceeds shall be  
10 determined in accordance with RCW 69.50.505(9).

11 **Sec. 11.** RCW 9A.88.150 and 2014 c 188 s 4 are each amended to  
12 read as follows:

13 (1) The following are subject to seizure and forfeiture and no  
14 property right exists in them:

15 (a) Any property or other interest acquired or maintained in  
16 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070 to the extent of  
17 the investment of funds, and any appreciation or income attributable  
18 to the investment, from a violation of RCW 9.68A.100, 9.68A.101, or  
19 9A.88.070;

20 (b) All conveyances, including aircraft, vehicles, or vessels,  
21 which are used, or intended for use, in any manner to facilitate a  
22 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, except that:

23 (i) No conveyance used by any person as a common carrier in the  
24 transaction of business as a common carrier is subject to forfeiture  
25 under this section unless it appears that the owner or other person  
26 in charge of the conveyance is a consenting party or privy to a  
27 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070;

28 (ii) No conveyance is subject to forfeiture under this section by  
29 reason of any act or omission established by the owner thereof to  
30 have been committed or omitted without the owner's knowledge or  
31 consent;

32 (iii) A forfeiture of a conveyance encumbered by a bona fide  
33 security interest is subject to the interest of the secured party if  
34 the secured party neither had knowledge of nor consented to the act  
35 or omission; and

36 (iv) When the owner of a conveyance has been arrested for a  
37 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, the conveyance  
38 in which the person is arrested may not be subject to forfeiture

1 unless it is seized or process is issued for its seizure within ten  
2 days of the owner's arrest;

3 (c) Any property, contractual right, or claim against property  
4 used to influence any enterprise that a person has established,  
5 operated, controlled, conducted, or participated in the conduct of,  
6 in violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070;

7 (d) All proceeds traceable to or derived from an offense defined  
8 in RCW 9.68A.100, 9.68A.101, or 9A.88.070 and all moneys, negotiable  
9 instruments, securities, and other things of value significantly used  
10 or intended to be used significantly to facilitate commission of the  
11 offense;

12 (e) All books, records, and research products and materials,  
13 including formulas, microfilm, tapes, and data which are used, or  
14 intended for use, in violation of RCW 9.68A.100, 9.68A.101, or  
15 9A.88.070;

16 (f) All moneys, negotiable instruments, securities, or other  
17 tangible or intangible property of value furnished or intended to be  
18 furnished by any person in exchange for a violation of RCW 9.68A.100,  
19 9.68A.101, or 9A.88.070, all tangible or intangible personal  
20 property, proceeds, or assets acquired in whole or in part with  
21 proceeds traceable to an exchange or series of exchanges in violation  
22 of RCW 9.68A.100, 9.68A.101, or 9A.88.070, and all moneys, negotiable  
23 instruments, and securities used or intended to be used to facilitate  
24 any violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070. A forfeiture  
25 of money, negotiable instruments, securities, or other tangible or  
26 intangible property encumbered by a bona fide security interest is  
27 subject to the interest of the secured party if, at the time the  
28 security interest was created, the secured party neither had  
29 knowledge of nor consented to the act or omission. No personal  
30 property may be forfeited under this subsection (1)(f), to the extent  
31 of the interest of an owner, by reason of any act or omission, which  
32 that owner establishes was committed or omitted without the owner's  
33 knowledge or consent; and

34 (g) All real property, including any right, title, and interest  
35 in the whole of any lot or tract of land, and any appurtenances or  
36 improvements which are being used with the knowledge of the owner for  
37 a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, or which have  
38 been acquired in whole or in part with proceeds traceable to an  
39 exchange or series of exchanges in violation of RCW 9.68A.100,

1 9.68A.101, or 9A.88.070, if a substantial nexus exists between the  
2 violation and the real property. However:

3 (i) No property may be forfeited pursuant to this subsection  
4 (1)(g), to the extent of the interest of an owner, by reason of any  
5 act or omission committed or omitted without the owner's knowledge or  
6 consent;

7 (ii) A forfeiture of real property encumbered by a bona fide  
8 security interest is subject to the interest of the secured party if  
9 the secured party, at the time the security interest was created,  
10 neither had knowledge of nor consented to the act or omission.

11 (2) Real or personal property subject to forfeiture under this  
12 section may be seized by any law enforcement officer of this state  
13 upon process issued by any superior court having jurisdiction over  
14 the property. Seizure of real property shall include the filing of a  
15 lis pendens by the seizing agency. Real property seized under this  
16 section shall not be transferred or otherwise conveyed until ninety  
17 days after seizure or until a judgment of forfeiture is entered,  
18 whichever is later: PROVIDED, That real property seized under this  
19 section may be transferred or conveyed to any person or entity who  
20 acquires title by foreclosure or deed in lieu of foreclosure of a  
21 security interest. Seizure of personal property without process may  
22 be made if:

23 (a) The seizure is incident to an arrest or a search under a  
24 search warrant;

25 (b) The property subject to seizure has been the subject of a  
26 prior judgment in favor of the state in a criminal injunction or  
27 forfeiture proceeding; or

28 (c) The law enforcement officer has probable cause to believe  
29 that the property was used or is intended to be used in violation of  
30 RCW 9.68A.100, 9.68A.101, or 9A.88.070.

31 (3) In the event of seizure pursuant to subsection (2) of this  
32 section, proceedings for forfeiture shall be deemed commenced by the  
33 seizure. The law enforcement agency under whose authority the seizure  
34 was made shall cause notice to be served within fifteen days  
35 following the seizure on the owner of the property seized and the  
36 person in charge thereof and any person having any known right or  
37 interest therein, including any community property interest, of the  
38 seizure and intended forfeiture of the seized property. Service of  
39 notice of seizure of real property shall be made according to the  
40 rules of civil procedure. However, the state may not obtain a default

1 judgment with respect to real property against a party who is served  
2 by substituted service absent an affidavit stating that a good faith  
3 effort has been made to ascertain if the defaulted party is  
4 incarcerated within the state, and that there is no present basis to  
5 believe that the party is incarcerated within the state. Notice of  
6 seizure in the case of property subject to a security interest that  
7 has been perfected by filing a financing statement, or a certificate  
8 of title, shall be made by service upon the secured party or the  
9 secured party's assignee at the address shown on the financing  
10 statement or the certificate of title. The notice of seizure in other  
11 cases may be served by any method authorized by law or court rule  
12 including, but not limited to, service by certified mail with return  
13 receipt requested. Service by mail shall be deemed complete upon  
14 mailing within the fifteen day period following the seizure.

15 (4) If no person notifies the seizing law enforcement agency in  
16 writing of the person's claim of ownership or right to possession of  
17 items specified in subsection (1) of this section within forty-five  
18 days of the service of notice from the seizing agency in the case of  
19 personal property and ninety days in the case of real property, the  
20 item seized shall be deemed forfeited. The community property  
21 interest in real property of a person whose spouse or domestic  
22 partner committed a violation giving rise to seizure of the real  
23 property may not be forfeited if the person did not participate in  
24 the violation.

25 (5) If any person notifies the seizing law enforcement agency in  
26 writing of the person's claim of ownership or right to possession of  
27 items specified in subsection (1) of this section within forty-five  
28 days of the service of notice from the seizing agency in the case of  
29 personal property and ninety days in the case of real property, the  
30 person or persons shall be afforded a reasonable opportunity to be  
31 heard as to the claim or right. The notice of claim may be served by  
32 any method authorized by law or court rule including, but not limited  
33 to, service by first-class mail. Service by mail shall be deemed  
34 complete upon mailing within the forty-five day period following  
35 service of the notice of seizure in the case of personal property and  
36 within the ninety day period following service of the notice of  
37 seizure in the case of real property. The hearing shall be before the  
38 chief law enforcement officer of the seizing agency or the chief law  
39 enforcement officer's designee, except where the seizing agency is a  
40 state agency as defined in RCW 34.12.020(4), the hearing shall be

1 before the chief law enforcement officer of the seizing agency or an  
2 administrative law judge appointed under chapter 34.12 RCW, except  
3 that any person asserting a claim or right may remove the matter to a  
4 court of competent jurisdiction. Removal of any matter involving  
5 personal property may only be accomplished according to the rules of  
6 civil procedure. The person seeking removal of the matter must serve  
7 process against the state, county, political subdivision, or  
8 municipality that operates the seizing agency, and any other party of  
9 interest, in accordance with RCW 4.28.080 or 4.92.020, within  
10 forty-five days after the person seeking removal has notified the  
11 seizing law enforcement agency of the person's claim of ownership or  
12 right to possession. The court to which the matter is to be removed  
13 shall be the district court when the aggregate value of personal  
14 property is within the jurisdictional limit set forth in RCW  
15 3.66.020. A hearing before the seizing agency and any appeal  
16 therefrom shall be under Title 34 RCW. In all cases, the burden of  
17 proof is upon the law enforcement agency to establish, by a  
18 preponderance of the evidence, that the property is subject to  
19 forfeiture.

20 The seizing law enforcement agency shall promptly return the  
21 article or articles to the claimant upon a determination by the  
22 administrative law judge or court that the claimant is the present  
23 lawful owner or is lawfully entitled to possession thereof of items  
24 specified in subsection (1) of this section.

25 (6) In any proceeding to forfeit property under this title, where  
26 the claimant substantially prevails, the claimant is entitled to  
27 reasonable attorneys' fees reasonably incurred by the claimant. In  
28 addition, in a court hearing between two or more claimants to the  
29 article or articles involved, the prevailing party is entitled to a  
30 judgment for costs and reasonable attorneys' fees.

31 (7) When property is forfeited under this chapter, the seizing  
32 law enforcement agency may:

33 (a) Retain it for official use or upon application by any law  
34 enforcement agency of this state release the property to that agency  
35 for the exclusive use of enforcing this chapter or chapter 9.68A RCW;

36 (b) Sell that which is not required to be destroyed by law and  
37 which is not harmful to the public; or

38 (c) Request the appropriate sheriff or director of public safety  
39 to take custody of the property and remove it for disposition in  
40 accordance with law.

1 (8)(a) When property is forfeited, the seizing agency shall keep  
2 a record indicating the identity of the prior owner, if known, a  
3 description of the property, the disposition of the property, the  
4 value of the property at the time of seizure, and the amount of  
5 proceeds realized from disposition of the property.

6 (b) Each seizing agency shall retain records of forfeited  
7 property for at least seven years.

8 (c) Each seizing agency shall file a report including a copy of  
9 the records of forfeited property with the state treasurer each  
10 calendar quarter.

11 (d) The quarterly report need not include a record of forfeited  
12 property that is still being held for use as evidence during the  
13 investigation or prosecution of a case or during the appeal from a  
14 conviction.

15 (9)(a) By January 31st of each year, each seizing agency shall  
16 remit to the state treasurer an amount equal to (~~ten~~) one hundred  
17 percent of the net proceeds of any property forfeited during the  
18 preceding calendar year. Money remitted shall be deposited in the  
19 (~~prostitution prevention and intervention~~) education legacy trust  
20 account under RCW (~~43.63A.740~~) 83.100.230 for common schools.

21 (b) The net proceeds of forfeited property is the value of the  
22 forfeitable interest in the property after deducting the cost of  
23 satisfying any bona fide security interest to which the property is  
24 subject at the time of seizure; and in the case of sold property,  
25 after deducting the cost of sale, including reasonable fees or  
26 commissions paid to independent selling agents, and the cost of any  
27 valid landlord's claim for damages under subsection (12) of this  
28 section.

29 (c) The value of sold forfeited property is the sale price. The  
30 value of destroyed property and retained firearms or illegal property  
31 is zero.

32 (~~Net proceeds not required to be paid to the state~~  
33 ~~treasurer shall be used for payment of all proper expenses of the~~  
34 ~~investigation leading to the seizure, including any money delivered~~  
35 ~~to the subject of the investigation by the law enforcement agency,~~  
36 ~~and of the proceedings for forfeiture and sale, including expenses of~~  
37 ~~seizure, maintenance of custody, advertising, actual costs of the~~  
38 ~~prosecuting or city attorney, and court costs. Money remaining after~~  
39 ~~payment of these expenses~~) Forfeited property retained shall be  
40 (~~retained~~) used by the seizing law enforcement agency for the

1 exclusive use of enforcing the provisions of this chapter or chapter  
2 9.68A RCW.

3 (11) Upon the entry of an order of forfeiture of real property,  
4 the court shall forward a copy of the order to the assessor of the  
5 county in which the property is located. Orders for the forfeiture of  
6 real property shall be entered by the superior court, subject to  
7 court rules. Such an order shall be filed by the seizing agency in  
8 the county auditor's records in the county in which the real property  
9 is located.

10 (12) A landlord may assert a claim against proceeds from the sale  
11 of assets seized and forfeited under subsection (9) of this section,  
12 only if:

13 (a) A law enforcement officer, while acting in his or her  
14 official capacity, directly caused damage to the complaining  
15 landlord's property while executing a search of a tenant's residence;

16 (b) The landlord has applied any funds remaining in the tenant's  
17 deposit, to which the landlord has a right under chapter 59.18 RCW,  
18 to cover the damage directly caused by a law enforcement officer  
19 prior to asserting a claim under the provisions of this section:

20 (i) Only if the funds applied under (b) of this subsection are  
21 insufficient to satisfy the damage directly caused by a law  
22 enforcement officer, may the landlord seek compensation for the  
23 damage by filing a claim against the governmental entity under whose  
24 authority the law enforcement agency operates within thirty days  
25 after the search;

26 (ii) Only if the governmental entity denies or fails to respond  
27 to the landlord's claim within sixty days of the date of filing, may  
28 the landlord collect damages under this subsection by filing within  
29 thirty days of denial or the expiration of the sixty day period,  
30 whichever occurs first, a claim with the seizing law enforcement  
31 agency. The seizing law enforcement agency must notify the landlord  
32 of the status of the claim by the end of the thirty day period.  
33 Nothing in this section requires the claim to be paid by the end of  
34 the sixty day or thirty day period; and

35 (c) For any claim filed under (b) of this subsection, the law  
36 enforcement agency shall pay the claim unless the agency provides  
37 substantial proof that the landlord either:

38 (i) Knew or consented to actions of the tenant in violation of  
39 RCW 9.68A.100, 9.68A.101, or 9A.88.070; or

1 (ii) Failed to respond to a notification of the illegal activity,  
2 provided by a law enforcement agency under RCW 59.18.075, within  
3 seven days of receipt of notification of the illegal activity.

4 (13) The landlord's claim for damages under subsection (12) of  
5 this section may not include a claim for loss of business and is  
6 limited to:

7 (a) Damage to tangible property and clean-up costs;

8 (b) The lesser of the cost of repair or fair market value of the  
9 damage directly caused by a law enforcement officer;

10 (c) The proceeds from the sale of the specific tenant's property  
11 seized and forfeited under subsection (9) of this section; and

12 (d) The proceeds available after the seizing law enforcement  
13 agency satisfies any bona fide security interest in the tenant's  
14 property and costs related to sale of the tenant's property as  
15 provided by subsection (12) of this section.

16 (14) Subsections (12) and (13) of this section do not limit any  
17 other rights a landlord may have against a tenant to collect for  
18 damages. However, if a law enforcement agency satisfies a landlord's  
19 claim under subsection (12) of this section, the rights the landlord  
20 has against the tenant for damages directly caused by a law  
21 enforcement officer under the terms of the landlord and tenant's  
22 contract are subrogated to the law enforcement agency.

23 **Sec. 12.** RCW 10.105.010 and 2009 c 479 s 15 are each amended to  
24 read as follows:

25 (1) The following are subject to seizure and forfeiture and no  
26 property right exists in them: All personal property, including, but  
27 not limited to, any item, object, tool, substance, device, weapon,  
28 machine, vehicle of any kind, money, security, or negotiable  
29 instrument, which has been or was actually employed as an  
30 instrumentality in the commission of, or in aiding or abetting in the  
31 commission of any felony, or which was furnished or was intended to  
32 be furnished by any person in the commission of, as a result of, or  
33 as compensation for the commission of, any felony, or which was  
34 acquired in whole or in part with proceeds traceable to the  
35 commission of a felony. No property may be forfeited under this  
36 section until after there has been a superior court conviction of the  
37 owner of the property for the felony in connection with which the  
38 property was employed, furnished, or acquired.

1 A forfeiture of property encumbered by a bona fide security  
2 interest is subject to the interest of the secured party if at the  
3 time the security interest was created, the secured party neither had  
4 knowledge of nor consented to the commission of the felony.

5 (2) Personal property subject to forfeiture under this chapter  
6 may be seized by any law enforcement officer of this state upon  
7 process issued by any superior court having jurisdiction over the  
8 property. Seizure of personal property without process may be made  
9 if:

10 (a) The seizure is incident to an arrest or a search under a  
11 search warrant;

12 (b) The property subject to seizure has been the subject of a  
13 prior judgment in favor of the state in a criminal injunction or  
14 forfeiture proceeding;

15 (c) A law enforcement officer has probable cause to believe that  
16 the property is directly dangerous to health or safety; or

17 (d) The law enforcement officer has probable cause to believe  
18 that the property was used or is intended to be used in the  
19 commission of a felony.

20 (3) In the event of seizure pursuant to this section, proceedings  
21 for forfeiture shall be deemed commenced by the seizure. The law  
22 enforcement agency under whose authority the seizure was made shall  
23 cause notice to be served within fifteen days following the seizure  
24 on the owner of the property seized and the person in charge thereof  
25 and any person having any known right or interest therein, including  
26 any community property interest, of the seizure and intended  
27 forfeiture of the seized property. The notice of seizure may be  
28 served by any method authorized by law or court rule including but  
29 not limited to service by certified mail with return receipt  
30 requested. Service by mail shall be deemed complete upon mailing  
31 within the fifteen day period following the seizure. Notice of  
32 seizure in the case of property subject to a security interest that  
33 has been perfected by filing a financing statement in accordance with  
34 chapter 62A.9A RCW, or a certificate of title shall be made by  
35 service upon the secured party or the secured party's assignee at the  
36 address shown on the financing statement or the certificate of title.

37 (4) If no person notifies the seizing law enforcement agency in  
38 writing of the person's claim of ownership or right to possession of  
39 items specified in subsection (1) of this section within forty-five  
40 days of the seizure, the item seized shall be deemed forfeited.

1 (5) If a person notifies the seizing law enforcement agency in  
2 writing of the person's claim of ownership or right to possession of  
3 the seized property within forty-five days of the seizure, the law  
4 enforcement agency shall give the person or persons a reasonable  
5 opportunity to be heard as to the claim or right. The hearing shall  
6 be before the chief law enforcement officer of the seizing agency or  
7 the chief law enforcement officer's designee, except where the  
8 seizing agency is a state agency as defined in RCW 34.12.020(4), the  
9 hearing shall be before the chief law enforcement officer of the  
10 seizing agency or an administrative law judge appointed under chapter  
11 34.12 RCW, except that any person asserting a claim or right may  
12 remove the matter to a court of competent jurisdiction. Removal may  
13 only be accomplished according to the rules of civil procedure. The  
14 person seeking removal of the matter must serve process against the  
15 state, county, political subdivision, or municipality that operates  
16 the seizing agency, and any other party of interest, in accordance  
17 with RCW 4.28.080 or 4.92.020, within forty-five days after the  
18 person seeking removal has notified the seizing law enforcement  
19 agency of the person's claim of ownership or right to possession. The  
20 court to which the matter is to be removed shall be the district  
21 court when the aggregate value of the property is within the  
22 jurisdictional limit set forth in RCW 3.66.020. A hearing before the  
23 seizing agency and any appeal therefrom shall be under Title 34 RCW.  
24 In a court hearing between two or more claimants to the property  
25 involved, the prevailing party shall be entitled to a judgment for  
26 costs and reasonable attorney's fees. The burden of producing  
27 evidence shall be upon the person claiming to be the lawful owner or  
28 the person claiming to have the lawful right to possession of the  
29 property. The seizing law enforcement agency shall promptly return  
30 the property to the claimant upon a determination by the  
31 administrative law judge or court that the claimant is the present  
32 lawful owner or is lawfully entitled to possession of the property.

33 (6) When property is forfeited under this chapter, after  
34 satisfying any court-ordered victim restitution, the seizing law  
35 enforcement agency may:

36 (a) Retain it for official use or upon application by any law  
37 enforcement agency of this state release such property to such agency  
38 for the exclusive use of enforcing the criminal law;

39 (b) Sell that which is not required to be destroyed by law and  
40 which is not harmful to the public.

1 (7) By January 31st of each year, each seizing agency shall remit  
2 to the state treasurer an amount equal to (~~ten~~) one hundred percent  
3 of the net proceeds of any property forfeited during the preceding  
4 calendar year. Money remitted shall be deposited in the (~~state~~  
5 ~~general fund~~) education legacy trust account under RCW 83.100.230  
6 for common schools.

7 (a) The net proceeds of forfeited property is the value of the  
8 forfeitable interest in the property after deducting the cost of  
9 satisfying any bona fide security interest to which the property is  
10 subject at the time of seizure; and in the case of sold property,  
11 after deducting the cost of sale, including reasonable fees or  
12 commissions paid to independent selling agents.

13 (b) The value of sold forfeited property is the sale price. The  
14 value of retained forfeited property is the fair market value of the  
15 property at the time of seizure, determined when possible by  
16 reference to an applicable commonly used index, such as the index  
17 used by the department of licensing for valuation of motor vehicles.  
18 A seizing agency may use, but need not use, an independent qualified  
19 appraiser to determine the value of retained property. If an  
20 appraiser is used, the value of the property appraised is net of the  
21 cost of the appraisal. The value of destroyed property and retained  
22 firearms or illegal property is zero.

23 (c) (~~Retained~~) Forfeited property (~~and net proceeds not~~  
24 ~~required to be paid to the state treasurer, or otherwise required to~~  
25 ~~be spent under this section,~~) retained shall be (~~retained~~) used by  
26 the seizing law enforcement agency exclusively for the expansion and  
27 improvement of law enforcement activity. (~~Money~~) Forfeited property  
28 retained under this section may not be used to supplant preexisting  
29 funding sources.

30 **Sec. 13.** RCW 19.290.230 and 2013 c 322 s 27 are each amended to  
31 read as follows:

32 (1) The following personal property is subject to seizure and  
33 forfeiture and no property right exists in them: All personal  
34 property including, but not limited to, any item, object, tool,  
35 substance, device, weapon, machine, vehicle of any kind, money,  
36 security, or negotiable instrument, which the seizing agency proves  
37 by a preponderance of the evidence was used or intended to be used by  
38 its owner or the person in charge to knowingly or intentionally  
39 facilitate the commission of, or to knowingly or intentionally abet

1 the commission of, a crime involving theft, trafficking, or unlawful  
2 possession of commercial metal property, or which the seizing agency  
3 proves by a preponderance of the evidence was knowingly or  
4 intentionally furnished or was intended to be furnished by any person  
5 in the commission of, as a result of, or as compensation for the  
6 commission of, a crime involving theft, trafficking, or the unlawful  
7 possession of commercial metal property, or which the property owner  
8 acquired in whole or in part with proceeds traceable to a knowing or  
9 intentional commission of a crime involving the theft, trafficking,  
10 or unlawful possession of commercial metal property provided that  
11 such activity is not less than a class C felony; except that:

12 (a) No vehicle used by any person as a common carrier in the  
13 transaction of business as a common carrier is subject to forfeiture  
14 under this section unless the seizing agency proves by a  
15 preponderance of the evidence that the owner or other person in  
16 charge of the vehicle is a consenting party or is privy to any crime  
17 involving theft, trafficking, or the unlawful possession of  
18 commercial metal property;

19 (b) A forfeiture of property encumbered by a bona fide security  
20 interest is subject to the interest of the secured party if the  
21 secured party neither had actual or constructive knowledge of nor  
22 consented to the commission of any crime involving the theft,  
23 trafficking, or unlawful possession of commercial metal property; and

24 (c) A property owner's property is not subject to seizure if an  
25 employee or agent of that property owner uses the property owner's  
26 property to knowingly or intentionally facilitate the commission of,  
27 or to knowingly or intentionally aid and abet the commission of, a  
28 crime involving theft, trafficking, or unlawful possession of  
29 commercial metal property, in violation of that property owner's  
30 instructions or policies against such activity, and without the  
31 property owner's knowledge or consent.

32 (2) The following real property is subject to seizure and  
33 forfeiture and no property right exists in them: All real property,  
34 including any right, title, and interest in the whole of any lot or  
35 tract of land, and any appurtenances or improvements, that the  
36 seizing agency proves by a preponderance of the evidence are being  
37 used with the knowledge of the owner for the intentional commission  
38 of any crime involving the theft, trafficking, or unlawful possession  
39 of commercial metal property, or which have been acquired in whole or  
40 in part with proceeds traceable to the commission of any crime

1 involving the trafficking, theft, or unlawful possession of  
2 commercial metal, if such activity is not less than a class C felony  
3 and a substantial nexus exists between the commission of the  
4 violation or crime and the real property. However:

5 (a) No property may be forfeited pursuant to this subsection (2),  
6 to the extent of the interest of an owner, by reason of any act or  
7 omission committed or omitted without the owner's actual or  
8 constructive knowledge; and further, a property owner's real property  
9 is not subject to seizure if an employee or agent of that property  
10 owner uses the property owner's real property to knowingly or  
11 intentionally facilitate the commission of, or to knowingly or  
12 intentionally aid and abet the commission of, a crime involving  
13 theft, trafficking, or unlawful possession of commercial metal  
14 property, in violation of that property owner's instructions or  
15 policies against such activity, and without the property owner's  
16 knowledge or consent; and

17 (b) A forfeiture of real property encumbered by a bona fide  
18 security interest is subject to the interest of the secured party if  
19 the secured party, neither had actual or constructive knowledge, nor  
20 consented to the act or omission.

21 (3) Property subject to forfeiture under this chapter may be  
22 seized by any law enforcement officer of this state upon process  
23 issued by any superior court having jurisdiction over the property.  
24 Seizure of real property shall include the filing of a lis pendens by  
25 the seizing agency. Real property seized under this section shall not  
26 be transferred or otherwise conveyed until ninety days after seizure  
27 or until a judgment of forfeiture is entered, whichever is later:  
28 PROVIDED, That real property seized under this section may be  
29 transferred or conveyed to any person or entity who acquires title by  
30 foreclosure or deed in lieu of foreclosure of a security interest.  
31 Seizure of personal property without process may be made if:

32 (a) The seizure is incident to an arrest or a search under a  
33 search warrant; or

34 (b) The property subject to seizure has been the subject of a  
35 prior judgment in favor of the state in a criminal injunction or  
36 forfeiture proceeding.

37 (4) In the event of seizure pursuant to this section, proceedings  
38 for forfeiture shall be deemed commenced by the seizure. The law  
39 enforcement agency under whose authority the seizure was made shall  
40 cause notice to be served within fifteen days following the seizure

1 on the owner of the property seized and the person in charge thereof  
2 and any person having any known right or interest therein, including  
3 any community property interest, of the seizure and intended  
4 forfeiture of the seized property. Service of notice of seizure of  
5 real property shall be made according to the rules of civil  
6 procedure. However, the state may not obtain a default judgment with  
7 respect to real property against a party who is served by substituted  
8 service absent an affidavit stating that a good faith effort has been  
9 made to ascertain if the defaulted party is incarcerated within the  
10 state, and that there is no present basis to believe that the party  
11 is incarcerated within the state. The notice of seizure of personal  
12 property may be served by any method authorized by law or court rule  
13 including but not limited to service by certified mail with return  
14 receipt requested. Service by mail shall be deemed complete upon  
15 mailing within the fifteen-day period following the seizure. Notice  
16 of seizure in the case of property subject to a security interest  
17 that has been perfected by filing a financing statement in accordance  
18 with chapter 62A.9A RCW, or a certificate of title shall be made by  
19 service upon the secured party or the secured party's assignee at the  
20 address shown on the financing statement or the certificate of title.

21 (5) If no person notifies the seizing law enforcement agency in  
22 writing of the person's claim of ownership or right to possession of  
23 items specified in subsection (1) of this section within forty-five  
24 days of the seizure in the case of personal property and ninety days  
25 in the case of real property, the item seized shall be deemed  
26 forfeited. The community property interest in real property of a  
27 person whose spouse or domestic partner committed a violation giving  
28 rise to seizure of the real property may not be forfeited if the  
29 person did not participate in the violation.

30 (6) If a person notifies the seizing law enforcement agency in  
31 writing of the person's claim of ownership or right to possession of  
32 the seized property within forty-five days of the seizure in the case  
33 of personal property and ninety days in the case of real property,  
34 the law enforcement agency shall give the person or persons a  
35 reasonable opportunity to be heard as to the claim or right. The  
36 hearing shall be before the chief law enforcement officer of the  
37 seizing agency or the chief law enforcement officer's designee,  
38 except where the seizing agency is a state agency as defined in RCW  
39 34.12.020(4), the hearing shall be before the chief law enforcement  
40 officer of the seizing agency or an administrative law judge

1 appointed under chapter 34.12 RCW, except that any person asserting a  
2 claim or right may remove the matter to a court of competent  
3 jurisdiction. Removal may only be accomplished according to the rules  
4 of civil procedure. The person seeking removal of the matter must  
5 serve process against the state, county, political subdivision, or  
6 municipality that operates the seizing agency, and any other party of  
7 interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-  
8 five days after the person seeking removal has notified the seizing  
9 law enforcement agency of the person's claim of ownership or right to  
10 possession. The court to which the matter is to be removed shall be  
11 the district court when the aggregate value of the property is within  
12 the jurisdictional limit set forth in RCW 3.66.020. A hearing before  
13 the seizing agency and any appeal therefrom shall be under Title 34  
14 RCW. In a court hearing between two or more claimants to the property  
15 involved, the prevailing party shall be entitled to a judgment for  
16 costs and reasonable attorneys' fees. The burden of producing  
17 evidence shall be upon the person claiming to be the lawful owner or  
18 the person claiming to have the lawful right to possession of the  
19 property.

20 (7) At the hearing, the seizing agency has the burden of proof to  
21 establish by a preponderance of the evidence that seized property is  
22 subject to forfeiture, and that the use or intended use of the seized  
23 property in connection with a crime pursuant to this section occurred  
24 with the owner's actual or constructive knowledge or consent. The  
25 person claiming to be the lawful owner or the person claiming to have  
26 the lawful right to possession of the property has the burden of  
27 proof to establish by a preponderance of the evidence that the person  
28 owns or has a right to possess the seized property. The possession of  
29 bare legal title is not sufficient to establish ownership of seized  
30 property if the seizing agency proves by a preponderance of the  
31 evidence that the person claiming ownership or right to possession is  
32 a nominal owner and did not actually own or exert a controlling  
33 interest in the property.

34 The seizing law enforcement agency shall promptly return the  
35 property to the claimant upon a determination by the administrative  
36 law judge or court that the claimant is the present lawful owner or  
37 is lawfully entitled to possession of the property.

38 (8) When property is forfeited under this chapter, after  
39 satisfying any court-ordered victim restitution, the seizing law  
40 enforcement agency may:

1 (a) Retain it for official use or, upon application by any law  
2 enforcement agency of this state, release such property to such  
3 agency; or

4 (b) Sell that which is not required to be destroyed by law and  
5 which is not harmful to the public.

6 (9)(a) Within one hundred twenty days after the entry of an order  
7 of forfeiture, each seizing agency shall remit to, if known, the  
8 victim of the crime involving the seized property, an amount equal to  
9 fifty percent of the net proceeds of any property forfeited.

10 (b) By January 31st of each year, each seizing agency shall remit  
11 to the state treasurer an amount equal to one hundred percent of the  
12 net proceeds of any property forfeited during the preceding calendar  
13 year not required to be paid to victims. Money remitted shall be  
14 deposited in the education legacy trust account under RCW 83.100.230  
15 for common schools.

16 (c) Retained property (~~((and net proceeds))~~) not required to be  
17 paid to victims shall be retained by the seizing law enforcement  
18 agency exclusively for the expansion and improvement of law  
19 enforcement activity. (~~((Money))~~) Forfeited property retained under  
20 this section may not be used to supplant preexisting funding sources.

21 (~~((e))~~) (d) The net proceeds of forfeited property is the value  
22 of the forfeitable interest in the property after deducting the cost  
23 of satisfying any bona fide security interest to which the property  
24 is subject at the time of seizure; and in the case of sold property,  
25 after deducting the cost of sale, including reasonable fees or  
26 commissions paid to independent selling agents, and the cost of any  
27 valid landlord's claim for damages.

28 (~~((d))~~) (e) The value of sold forfeited property is the sale  
29 price. The value of retained forfeited property is the fair market  
30 value of the property at the time of seizure, determined when  
31 possible by reference to an applicable commonly used index, such as  
32 the index used by the department of licensing for valuation of motor  
33 vehicles. A seizing agency may use, but need not use, an independent  
34 qualified appraiser to determine the value of retained property. If  
35 an appraiser is used, the value of the property appraised is net of  
36 the cost of the appraisal. The value of destroyed property and  
37 retained firearms or illegal property is zero.

38 (10) Upon the entry of an order of forfeiture of real property,  
39 the court shall forward a copy of the order to the assessor of the  
40 county in which the property is located. Orders for the forfeiture of

1 real property shall be entered by the superior court, subject to  
2 court rules. Such an order shall be filed by the seizing agency in  
3 the county auditor's records in the county in which the real property  
4 is located.

5 **Sec. 14.** RCW 46.61.5058 and 2013 2nd sp.s. c 35 s 18 are each  
6 amended to read as follows:

7 (1) Upon the arrest of a person or upon the filing of a  
8 complaint, citation, or information in a court of competent  
9 jurisdiction, based upon probable cause to believe that a person has  
10 violated RCW 46.20.740, 46.61.502, or 46.61.504 or any similar  
11 municipal ordinance, if such person has a prior offense within seven  
12 years as defined in RCW 46.61.5055, and where the person has been  
13 provided written notice that any transfer, sale, or encumbrance of  
14 such person's interest in the vehicle over which that person was  
15 actually driving or had physical control when the violation occurred,  
16 is unlawful pending either acquittal, dismissal, sixty days after  
17 conviction, or other termination of the charge, such person shall be  
18 prohibited from encumbering, selling, or transferring his or her  
19 interest in such vehicle, except as otherwise provided in (a), (b),  
20 and (c) of this subsection, until either acquittal, dismissal, sixty  
21 days after conviction, or other termination of the charge. The  
22 prohibition against transfer of title shall not be stayed pending the  
23 determination of an appeal from the conviction.

24 (a) A vehicle encumbered by a bona fide security interest may be  
25 transferred to the secured party or to a person designated by the  
26 secured party;

27 (b) A leased or rented vehicle may be transferred to the lessor,  
28 rental agency, or to a person designated by the lessor or rental  
29 agency; and

30 (c) A vehicle may be transferred to a third party or a vehicle  
31 dealer who is a bona fide purchaser or may be subject to a bona fide  
32 security interest in the vehicle unless it is established that (i) in  
33 the case of a purchase by a third party or vehicle dealer, such party  
34 or dealer had actual notice that the vehicle was subject to the  
35 prohibition prior to the purchase, or (ii) in the case of a security  
36 interest, the holder of the security interest had actual notice that  
37 the vehicle was subject to the prohibition prior to the encumbrance  
38 of title.

1 (2) On conviction for a violation of either RCW 46.20.740,  
2 46.61.502, or 46.61.504 or any similar municipal ordinance where the  
3 person convicted has a prior offense within seven years as defined in  
4 RCW 46.61.5055, the motor vehicle the person was driving or over  
5 which the person had actual physical control at the time of the  
6 offense, if the person has a financial interest in the vehicle, the  
7 court shall consider at sentencing whether the vehicle shall be  
8 seized and forfeited pursuant to this section if a seizure or  
9 forfeiture has not yet occurred.

10 (3) A vehicle subject to forfeiture under this chapter may be  
11 seized by a law enforcement officer of this state upon process issued  
12 by a court of competent jurisdiction. Seizure of a vehicle may be  
13 made without process if the vehicle subject to seizure has been the  
14 subject of a prior judgment in favor of the state in a forfeiture  
15 proceeding based upon this section.

16 (4) Seizure under subsection (3) of this section automatically  
17 commences proceedings for forfeiture. The law enforcement agency  
18 under whose authority the seizure was made shall cause notice of the  
19 seizure and intended forfeiture of the seized vehicle to be served  
20 within fifteen days after the seizure on the owner of the vehicle  
21 seized, on the person in charge of the vehicle, and on any person  
22 having a known right or interest in the vehicle, including a  
23 community property interest. The notice of seizure may be served by  
24 any method authorized by law or court rule, including but not limited  
25 to service by certified mail with return receipt requested. Service  
26 by mail is complete upon mailing within the fifteen-day period after  
27 the seizure. Notice of seizure in the case of property subject to a  
28 security interest that has been perfected on a certificate of title  
29 shall be made by service upon the secured party or the secured  
30 party's assignee at the address shown on the financing statement or  
31 the certificate of title.

32 (5) If no person notifies the seizing law enforcement agency in  
33 writing of the person's claim of ownership or right to possession of  
34 the seized vehicle within forty-five days of the seizure, the vehicle  
35 is deemed forfeited.

36 (6) If a person notifies the seizing law enforcement agency in  
37 writing of the person's claim of ownership or right to possession of  
38 the seized vehicle within forty-five days of the seizure, the law  
39 enforcement agency shall give the person or persons a reasonable  
40 opportunity to be heard as to the claim or right. The hearing shall

1 be before the chief law enforcement officer of the seizing agency or  
2 the chief law enforcement officer's designee, except where the  
3 seizing agency is a state agency as defined in RCW 34.12.020, the  
4 hearing shall be before the chief law enforcement officer of the  
5 seizing agency or an administrative law judge appointed under chapter  
6 34.12 RCW, except that any person asserting a claim or right may  
7 remove the matter to a court of competent jurisdiction. Removal may  
8 only be accomplished according to the rules of civil procedure. The  
9 person seeking removal of the matter must serve process against the  
10 state, county, political subdivision, or municipality that operates  
11 the seizing agency, and any other party of interest, in accordance  
12 with RCW 4.28.080 or 4.92.020, within forty-five days after the  
13 person seeking removal has notified the seizing law enforcement  
14 agency of the person's claim of ownership or right to possession. The  
15 court to which the matter is to be removed shall be the district  
16 court when the aggregate value of the vehicle is within the  
17 jurisdictional limit set forth in RCW 3.66.020. A hearing before the  
18 seizing agency and any appeal therefrom shall be under Title 34 RCW.  
19 In a court hearing between two or more claimants to the vehicle  
20 involved, the prevailing party shall be entitled to a judgment for  
21 costs and reasonable attorneys' fees. The burden of producing  
22 evidence shall be upon the person claiming to be the legal owner or  
23 the person claiming to have the lawful right to possession of the  
24 vehicle. The seizing law enforcement agency shall promptly return the  
25 vehicle to the claimant upon a determination by the administrative  
26 law judge or court that the claimant is the present legal owner under  
27 this title or is lawfully entitled to possession of the vehicle.

28 (7) When a vehicle is forfeited under this chapter the seizing  
29 law enforcement agency may sell the vehicle, retain it for official  
30 use, or upon application by a law enforcement agency of this state  
31 release the vehicle to that agency for the exclusive use of enforcing  
32 this title; provided, however, that the agency shall first satisfy  
33 any bona fide security interest to which the vehicle is subject under  
34 subsection (1)(a) or (c) of this section.

35 (8) When a vehicle is forfeited, the seizing agency shall keep a  
36 record indicating the identity of the prior owner, if known, a  
37 description of the vehicle, the disposition of the vehicle, the value  
38 of the vehicle at the time of seizure, and the amount of proceeds  
39 realized from disposition of the vehicle.

1 (9) Each seizing agency shall retain records of forfeited  
2 vehicles for at least seven years.

3 (10) Each seizing agency shall file a report including a copy of  
4 the records of forfeited vehicles with the state treasurer each  
5 calendar quarter.

6 (11) The quarterly report need not include a record of a  
7 forfeited vehicle that is still being held for use as evidence during  
8 the investigation or prosecution of a case or during the appeal from  
9 a conviction.

10 (12) By January 31st of each year, each seizing agency shall  
11 remit to the state treasurer an amount equal to (~~ten~~) one hundred  
12 percent of the net proceeds of vehicles forfeited during the  
13 preceding calendar year. Money remitted shall be deposited in the  
14 (~~state general fund~~) education legacy trust account under RCW  
15 83.100.230 for common schools.

16 (13) The net proceeds of a forfeited vehicle is the value of the  
17 forfeitable interest in the vehicle after deducting the cost of  
18 satisfying a bona fide security interest to which the vehicle is  
19 subject at the time of seizure; and in the case of a sold vehicle,  
20 after deducting the cost of sale, including reasonable fees or  
21 commissions paid to independent selling agents.

22 (14) The value of a sold forfeited vehicle is the sale price. The  
23 value of a retained forfeited vehicle is the fair market value of the  
24 vehicle at the time of seizure, determined when possible by reference  
25 to an applicable commonly used index, such as the index used by the  
26 department of licensing. A seizing agency may, but need not, use an  
27 independent qualified appraiser to determine the value of retained  
28 vehicles. If an appraiser is used, the value of the vehicle appraised  
29 is net of the cost of the appraisal.

30 **Sec. 15.** RCW 69.50.505 and 2013 c 3 s 25 are each amended to  
31 read as follows:

32 (1) The following are subject to seizure and forfeiture and no  
33 property right exists in them:

34 (a) All controlled substances which have been manufactured,  
35 distributed, dispensed, acquired, or possessed in violation of this  
36 chapter or chapter 69.41 or 69.52 RCW, and all hazardous chemicals,  
37 as defined in RCW 64.44.010, used or intended to be used in the  
38 manufacture of controlled substances;

1 (b) All raw materials, products, and equipment of any kind which  
2 are used, or intended for use, in manufacturing, compounding,  
3 processing, delivering, importing, or exporting any controlled  
4 substance in violation of this chapter or chapter 69.41 or 69.52 RCW;

5 (c) All property which is used, or intended for use, as a  
6 container for property described in (a) or (b) of this subsection;

7 (d) All conveyances, including aircraft, vehicles, or vessels,  
8 which are used, or intended for use, in any manner to facilitate the  
9 sale, delivery, or receipt of property described in (a) or (b) of  
10 this subsection, except that:

11 (i) No conveyance used by any person as a common carrier in the  
12 transaction of business as a common carrier is subject to forfeiture  
13 under this section unless it appears that the owner or other person  
14 in charge of the conveyance is a consenting party or privy to a  
15 violation of this chapter or chapter 69.41 or 69.52 RCW;

16 (ii) No conveyance is subject to forfeiture under this section by  
17 reason of any act or omission established by the owner thereof to  
18 have been committed or omitted without the owner's knowledge or  
19 consent;

20 (iii) No conveyance is subject to forfeiture under this section  
21 if used in the receipt of only an amount of marijuana for which  
22 possession constitutes a misdemeanor under RCW 69.50.4014;

23 (iv) A forfeiture of a conveyance encumbered by a bona fide  
24 security interest is subject to the interest of the secured party if  
25 the secured party neither had knowledge of nor consented to the act  
26 or omission; and

27 (v) When the owner of a conveyance has been arrested under this  
28 chapter or chapter 69.41 or 69.52 RCW the conveyance in which the  
29 person is arrested may not be subject to forfeiture unless it is  
30 seized or process is issued for its seizure within ten days of the  
31 owner's arrest;

32 (e) All books, records, and research products and materials,  
33 including formulas, microfilm, tapes, and data which are used, or  
34 intended for use, in violation of this chapter or chapter 69.41 or  
35 69.52 RCW;

36 (f) All drug paraphernalia(~~21~~) other than paraphernalia  
37 possessed, sold, or used solely to facilitate marijuana-related  
38 activities that are not violations of this chapter;

39 (g) All moneys, negotiable instruments, securities, or other  
40 tangible or intangible property of value furnished or intended to be

1 furnished by any person in exchange for a controlled substance in  
2 violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible  
3 or intangible personal property, proceeds, or assets acquired in  
4 whole or in part with proceeds traceable to an exchange or series of  
5 exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW,  
6 and all moneys, negotiable instruments, and securities used or  
7 intended to be used to facilitate any violation of this chapter or  
8 chapter 69.41 or 69.52 RCW. A forfeiture of money, negotiable  
9 instruments, securities, or other tangible or intangible property  
10 encumbered by a bona fide security interest is subject to the  
11 interest of the secured party if, at the time the security interest  
12 was created, the secured party neither had knowledge of nor consented  
13 to the act or omission. No personal property may be forfeited under  
14 this subsection (1)(g), to the extent of the interest of an owner, by  
15 reason of any act or omission which that owner establishes was  
16 committed or omitted without the owner's knowledge or consent; and

17 (h) All real property, including any right, title, and interest  
18 in the whole of any lot or tract of land, and any appurtenances or  
19 improvements which are being used with the knowledge of the owner for  
20 the manufacturing, compounding, processing, delivery, importing, or  
21 exporting of any controlled substance, or which have been acquired in  
22 whole or in part with proceeds traceable to an exchange or series of  
23 exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW,  
24 if such activity is not less than a class C felony and a substantial  
25 nexus exists between the commercial production or sale of the  
26 controlled substance and the real property. However:

27 (i) No property may be forfeited pursuant to this subsection  
28 (1)(h), to the extent of the interest of an owner, by reason of any  
29 act or omission committed or omitted without the owner's knowledge or  
30 consent;

31 (ii) The bona fide gift of a controlled substance, legend drug,  
32 or imitation controlled substance shall not result in the forfeiture  
33 of real property;

34 (iii) The possession of marijuana shall not result in the  
35 forfeiture of real property unless the marijuana is possessed for  
36 commercial purposes that are unlawful under Washington state law, the  
37 amount possessed is five or more plants or one pound or more of  
38 marijuana, and a substantial nexus exists between the possession of  
39 marijuana and the real property. In such a case, the intent of the  
40 offender shall be determined by the preponderance of the evidence,

1 including the offender's prior criminal history, the amount of  
2 marijuana possessed by the offender, the sophistication of the  
3 activity or equipment used by the offender, whether the offender was  
4 licensed to produce, process, or sell marijuana, or was an employee  
5 of a licensed producer, processor, or retailer, and other evidence  
6 which demonstrates the offender's intent to engage in unlawful  
7 commercial activity;

8 (iv) The unlawful sale of marijuana or a legend drug shall not  
9 result in the forfeiture of real property unless the sale was forty  
10 grams or more in the case of marijuana or one hundred dollars or more  
11 in the case of a legend drug, and a substantial nexus exists between  
12 the unlawful sale and the real property; and

13 (v) A forfeiture of real property encumbered by a bona fide  
14 security interest is subject to the interest of the secured party if  
15 the secured party, at the time the security interest was created,  
16 neither had knowledge of nor consented to the act or omission.

17 (2) Real or personal property subject to forfeiture under this  
18 chapter may be seized by any ((~~board~~)) commission inspector or law  
19 enforcement officer of this state upon process issued by any superior  
20 court having jurisdiction over the property. Seizure of real property  
21 shall include the filing of a lis pendens by the seizing agency. Real  
22 property seized under this section shall not be transferred or  
23 otherwise conveyed until ninety days after seizure or until a  
24 judgment of forfeiture is entered, whichever is later: PROVIDED, That  
25 real property seized under this section may be transferred or  
26 conveyed to any person or entity who acquires title by foreclosure or  
27 deed in lieu of foreclosure of a security interest. Seizure of  
28 personal property without process may be made if:

29 (a) The seizure is incident to an arrest or a search under a  
30 search warrant or an inspection under an administrative inspection  
31 warrant;

32 (b) The property subject to seizure has been the subject of a  
33 prior judgment in favor of the state in a criminal injunction or  
34 forfeiture proceeding based upon this chapter;

35 (c) A ((~~board~~)) commission inspector or law enforcement officer  
36 has probable cause to believe that the property is directly or  
37 indirectly dangerous to health or safety; or

38 (d) The ((~~board~~)) commission inspector or law enforcement officer  
39 has probable cause to believe that the property was used or is  
40 intended to be used in violation of this chapter.

1 (3) In the event of seizure pursuant to subsection (2) of this  
2 section, proceedings for forfeiture shall be deemed commenced by the  
3 seizure. The law enforcement agency under whose authority the seizure  
4 was made shall cause notice to be served within fifteen days  
5 following the seizure on the owner of the property seized and the  
6 person in charge thereof and any person having any known right or  
7 interest therein, including any community property interest, of the  
8 seizure and intended forfeiture of the seized property. Service of  
9 notice of seizure of real property shall be made according to the  
10 rules of civil procedure. However, the state may not obtain a default  
11 judgment with respect to real property against a party who is served  
12 by substituted service absent an affidavit stating that a good faith  
13 effort has been made to ascertain if the defaulted party is  
14 incarcerated within the state, and that there is no present basis to  
15 believe that the party is incarcerated within the state. Notice of  
16 seizure in the case of property subject to a security interest that  
17 has been perfected by filing a financing statement in accordance with  
18 chapter 62A.9A RCW, or a certificate of title, shall be made by  
19 service upon the secured party or the secured party's assignee at the  
20 address shown on the financing statement or the certificate of title.  
21 The notice of seizure in other cases may be served by any method  
22 authorized by law or court rule including but not limited to service  
23 by certified mail with return receipt requested. Service by mail  
24 shall be deemed complete upon mailing within the fifteen day period  
25 following the seizure.

26 (4) If no person notifies the seizing law enforcement agency in  
27 writing of the person's claim of ownership or right to possession of  
28 items specified in subsection (1)(d), (g), or (h) of this section  
29 within forty-five days of the service of notice from the seizing  
30 agency in the case of personal property and ninety days in the case  
31 of real property, the item seized shall be deemed forfeited. The  
32 community property interest in real property of a person whose spouse  
33 or domestic partner committed a violation giving rise to seizure of  
34 the real property may not be forfeited if the person did not  
35 participate in the violation.

36 (5) If any person notifies the seizing law enforcement agency in  
37 writing of the person's claim of ownership or right to possession of  
38 items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h)  
39 of this section within forty-five days of the service of notice from  
40 the seizing agency in the case of personal property and ninety days

1 in the case of real property, the person or persons shall be afforded  
2 a reasonable opportunity to be heard as to the claim or right. The  
3 notice of claim may be served by any method authorized by law or  
4 court rule including, but not limited to, service by first-class  
5 mail. Service by mail shall be deemed complete upon mailing within  
6 the forty-five day period following service of the notice of seizure  
7 in the case of personal property and within the ninety-day period  
8 following service of the notice of seizure in the case of real  
9 property. The hearing shall be before the chief law enforcement  
10 officer of the seizing agency or the chief law enforcement officer's  
11 designee, except where the seizing agency is a state agency as  
12 defined in RCW 34.12.020(4), the hearing shall be before the chief  
13 law enforcement officer of the seizing agency or an administrative  
14 law judge appointed under chapter 34.12 RCW, except that any person  
15 asserting a claim or right may remove the matter to a court of  
16 competent jurisdiction. Removal of any matter involving personal  
17 property may only be accomplished according to the rules of civil  
18 procedure. The person seeking removal of the matter must serve  
19 process against the state, county, political subdivision, or  
20 municipality that operates the seizing agency, and any other party of  
21 interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-  
22 five days after the person seeking removal has notified the seizing  
23 law enforcement agency of the person's claim of ownership or right to  
24 possession. The court to which the matter is to be removed shall be  
25 the district court when the aggregate value of personal property is  
26 within the jurisdictional limit set forth in RCW 3.66.020. A hearing  
27 before the seizing agency and any appeal therefrom shall be under  
28 Title 34 RCW. In all cases, the burden of proof is upon the law  
29 enforcement agency to establish, by a preponderance of the evidence,  
30 that the property is subject to forfeiture.

31 The seizing law enforcement agency shall promptly return the  
32 article or articles to the claimant upon a determination by the  
33 administrative law judge or court that the claimant is the present  
34 lawful owner or is lawfully entitled to possession thereof of items  
35 specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of  
36 this section.

37 (6) In any proceeding to forfeit property under this title, where  
38 the claimant substantially prevails, the claimant is entitled to  
39 reasonable attorneys' fees reasonably incurred by the claimant. In  
40 addition, in a court hearing between two or more claimants to the

1 article or articles involved, the prevailing party is entitled to a  
2 judgment for costs and reasonable attorneys' fees.

3 (7) When property is forfeited under this chapter the (~~board~~)  
4 commission or seizing law enforcement agency may:

5 (a) Retain it for official use or upon application by any law  
6 enforcement agency of this state release such property to such agency  
7 for the exclusive use of enforcing the provisions of this chapter;

8 (b) Sell that which is not required to be destroyed by law and  
9 which is not harmful to the public;

10 (c) Request the appropriate sheriff or director of public safety  
11 to take custody of the property and remove it for disposition in  
12 accordance with law; or

13 (d) Forward it to the drug enforcement administration for  
14 disposition.

15 (8)(a) When property is forfeited, the seizing agency shall keep  
16 a record indicating the identity of the prior owner, if known, a  
17 description of the property, the disposition of the property, the  
18 value of the property at the time of seizure, and the amount of  
19 proceeds realized from disposition of the property.

20 (b) Each seizing agency shall retain records of forfeited  
21 property for at least seven years.

22 (c) Each seizing agency shall file a report including a copy of  
23 the records of forfeited property with the state treasurer each  
24 calendar quarter.

25 (d) The quarterly report need not include a record of forfeited  
26 property that is still being held for use as evidence during the  
27 investigation or prosecution of a case or during the appeal from a  
28 conviction.

29 (9)(a) By January 31st of each year, each seizing agency shall  
30 remit to the state treasurer an amount equal to (~~ten~~) one hundred  
31 percent of the net proceeds of any property forfeited during the  
32 preceding calendar year. Money remitted shall be deposited in the  
33 (~~state general fund~~) education legacy trust account under RCW  
34 83.100.230 for common schools.

35 (b) The net proceeds of forfeited property is the value of the  
36 forfeitable interest in the property after deducting the cost of  
37 satisfying any bona fide security interest to which the property is  
38 subject at the time of seizure; and in the case of sold property,  
39 after deducting the cost of sale, including reasonable fees or  
40 commissions paid to independent selling agents, and the cost of any

1 valid landlord's claim for damages under subsection (15) of this  
2 section.

3 (c) The value of sold forfeited property is the sale price. The  
4 value of retained forfeited property is the fair market value of the  
5 property at the time of seizure, determined when possible by  
6 reference to an applicable commonly used index, such as the index  
7 used by the department of licensing for valuation of motor vehicles.  
8 A seizing agency may use, but need not use, an independent qualified  
9 appraiser to determine the value of retained property. If an  
10 appraiser is used, the value of the property appraised is net of the  
11 cost of the appraisal. The value of destroyed property and retained  
12 firearms or illegal property is zero.

13 (10) Forfeited property (~~and net proceeds not required to be~~  
14 ~~paid to the state treasurer shall be~~) retained by the seizing law  
15 enforcement agency shall be used exclusively for the expansion and  
16 improvement of controlled substances related law enforcement  
17 activity. (~~Money~~) Forfeited property retained under this section  
18 may not be used to supplant preexisting funding sources.

19 (11) Controlled substances listed in Schedule I, II, III, IV, and  
20 V that are possessed, transferred, sold, or offered for sale in  
21 violation of this chapter are contraband and shall be seized and  
22 summarily forfeited to the state. Controlled substances listed in  
23 Schedule I, II, III, IV, and V, which are seized or come into the  
24 possession of the (~~board~~) commission, the owners of which are  
25 unknown, are contraband and shall be summarily forfeited to the  
26 (~~board~~) commission.

27 (12) Species of plants from which controlled substances in  
28 Schedules I and II may be derived which have been planted or  
29 cultivated in violation of this chapter, or of which the owners or  
30 cultivators are unknown, or which are wild growths, may be seized and  
31 summarily forfeited to the (~~board~~) commission.

32 (13) The failure, upon demand by a (~~board~~) commission inspector  
33 or law enforcement officer, of the person in occupancy or in control  
34 of land or premises upon which the species of plants are growing or  
35 being stored to produce an appropriate registration or proof that he  
36 or she is the holder thereof constitutes authority for the seizure  
37 and forfeiture of the plants.

38 (14) Upon the entry of an order of forfeiture of real property,  
39 the court shall forward a copy of the order to the assessor of the  
40 county in which the property is located. Orders for the forfeiture of

1 real property shall be entered by the superior court, subject to  
2 court rules. Such an order shall be filed by the seizing agency in  
3 the county auditor's records in the county in which the real property  
4 is located.

5 (15)(a) A landlord may assert a claim against proceeds from the  
6 sale of assets seized and forfeited under subsection (7)(b) of this  
7 section, only if:

8 (i) A law enforcement officer, while acting in his or her  
9 official capacity, directly caused damage to the complaining  
10 landlord's property while executing a search of a tenant's residence;  
11 and

12 (ii) The landlord has applied any funds remaining in the tenant's  
13 deposit, to which the landlord has a right under chapter 59.18 RCW,  
14 to cover the damage directly caused by a law enforcement officer  
15 prior to asserting a claim under the provisions of this section;

16 (A) Only if the funds applied under (a)(ii) of this subsection  
17 are insufficient to satisfy the damage directly caused by a law  
18 enforcement officer, may the landlord seek compensation for the  
19 damage by filing a claim against the governmental entity under whose  
20 authority the law enforcement agency operates within thirty days  
21 after the search;

22 (B) Only if the governmental entity denies or fails to respond to  
23 the landlord's claim within sixty days of the date of filing, may the  
24 landlord collect damages under this subsection by filing within  
25 thirty days of denial or the expiration of the sixty-day period,  
26 whichever occurs first, a claim with the seizing law enforcement  
27 agency. The seizing law enforcement agency must notify the landlord  
28 of the status of the claim by the end of the thirty-day period.  
29 Nothing in this section requires the claim to be paid by the end of  
30 the sixty-day or thirty-day period.

31 (b) For any claim filed under (a)(ii) of this subsection, the law  
32 enforcement agency shall pay the claim unless the agency provides  
33 substantial proof that the landlord either:

34 (i) Knew or consented to actions of the tenant in violation of  
35 this chapter or chapter 69.41 or 69.52 RCW; or

36 (ii) Failed to respond to a notification of the illegal activity,  
37 provided by a law enforcement agency under RCW 59.18.075, within  
38 seven days of receipt of notification of the illegal activity.

1 (16) The landlord's claim for damages under subsection (15) of  
2 this section may not include a claim for loss of business and is  
3 limited to:

4 (a) Damage to tangible property and clean-up costs;

5 (b) The lesser of the cost of repair or fair market value of the  
6 damage directly caused by a law enforcement officer;

7 (c) The proceeds from the sale of the specific tenant's property  
8 seized and forfeited under subsection (7)(b) of this section; and

9 (d) The proceeds available after the seizing law enforcement  
10 agency satisfies any bona fide security interest in the tenant's  
11 property and costs related to sale of the tenant's property as  
12 provided by subsection (9)(b) of this section.

13 (17) Subsections (15) and (16) of this section do not limit any  
14 other rights a landlord may have against a tenant to collect for  
15 damages. However, if a law enforcement agency satisfies a landlord's  
16 claim under subsection (15) of this section, the rights the landlord  
17 has against the tenant for damages directly caused by a law  
18 enforcement officer under the terms of the landlord and tenant's  
19 contract are subrogated to the law enforcement agency.

20 **Sec. 16.** RCW 70.77.440 and 2002 c 370 s 38 are each amended to  
21 read as follows:

22 (1) In the event of seizure under RCW 70.77.435, proceedings for  
23 forfeiture shall be deemed commenced by the seizure. The chief of the  
24 Washington state patrol or a designee, through the director of fire  
25 protection or the agency conducting the seizure, under whose  
26 authority the seizure was made shall cause notice to be served within  
27 fifteen days following the seizure on the owner of the fireworks  
28 seized and the person in charge thereof and any person having any  
29 known right or interest therein, of the seizure and intended  
30 forfeiture of the seized property. The notice may be served by any  
31 method authorized by law or court rule including but not limited to  
32 service by certified mail with return receipt requested. Service by  
33 mail shall be deemed complete upon mailing within the fifteen-day  
34 period following the seizure.

35 (2) If no person notifies the chief of the Washington state  
36 patrol, through the director of fire protection or the agency  
37 conducting the seizure, in writing of the person's claim of lawful  
38 ownership or right to lawful possession of seized fireworks within

1 thirty days of the seizure, the seized fireworks shall be deemed  
2 forfeited.

3 (3) If any person notifies the chief of the Washington state  
4 patrol, through the director of fire protection or the agency  
5 conducting the seizure, in writing of the person's claim of lawful  
6 ownership or possession of the fireworks within thirty days of the  
7 seizure, the person or persons shall be afforded a reasonable  
8 opportunity to be heard as to the claim or right. The hearing shall  
9 be before an administrative law judge appointed under chapter 34.12  
10 RCW, except that any person asserting a claim or right may remove the  
11 matter to a court of competent jurisdiction if the aggregate value of  
12 the seized fireworks is more than five hundred dollars. The hearing  
13 before an administrative law judge and any appeal therefrom shall be  
14 under Title 34 RCW. In a court hearing between two or more claimants  
15 to the article or articles involved, the prevailing party shall be  
16 entitled to a judgment for costs and reasonable attorneys' fees. The  
17 burden of producing evidence shall be upon the person claiming to  
18 have the lawful right to possession of the seized fireworks. The  
19 chief of the Washington state patrol, through the director of fire  
20 protection or the agency conducting the seizure, shall promptly  
21 return the fireworks to the claimant upon a determination by the  
22 administrative law judge or court that the claimant is lawfully  
23 entitled to possession of the fireworks.

24 (4) When fireworks are forfeited under this chapter the chief of  
25 the Washington state patrol, through the director of fire protection  
26 or the agency conducting the seizure, may:

27 (a) Dispose of the fireworks by summary destruction at any time  
28 subsequent to thirty days from such seizure or ten days from the  
29 final termination of proceedings under this section, whichever is  
30 later; or

31 (b) Sell the forfeited fireworks and chemicals used to make  
32 fireworks, that are legal for use and possession under this chapter,  
33 to wholesalers or manufacturers, authorized to possess and use such  
34 fireworks or chemicals under a license issued by the chief of the  
35 Washington state patrol, through the director of fire protection.  
36 Sale shall be by public auction after publishing a notice of the  
37 date, place, and time of the auction in a newspaper of general  
38 circulation in the county in which the auction is to be held, at  
39 least three days before the date of the auction. The proceeds of the  
40 sale of the seized fireworks under this section may be retained by

1 the agency conducting the seizure and used to offset the costs of  
2 seizure and/or storage costs of the seized fireworks. The remaining  
3 proceeds, if any, shall be deposited in the (~~fire services trust~~  
4 ~~fund and shall be used as follows: At least fifty percent is for a~~  
5 ~~statewide public education campaign developed by the chief of the~~  
6 ~~Washington state patrol, through the director of fire protection, and~~  
7 ~~the licensed fireworks industry emphasizing the safe and responsible~~  
8 ~~use of legal fireworks; and the remainder is for statewide efforts to~~  
9 ~~enforce this chapter~~)) education legacy trust account under RCW  
10 83.100.230 for common schools.

11 **Sec. 17.** RCW 77.15.070 and 2005 c 406 s 2 are each amended to  
12 read as follows:

13 (1) Fish and wildlife officers and ex officio fish and wildlife  
14 officers may seize without warrant boats, airplanes, vehicles,  
15 motorized implements, conveyances, gear, appliances, or other  
16 articles they have probable cause to believe have been held with  
17 intent to violate or used in violation of this title or rule of the  
18 commission or director. However, fish and wildlife officers or ex  
19 officio fish and wildlife officers may not seize any item or article,  
20 other than for evidence, if under the circumstances, it is reasonable  
21 to conclude that the violation was inadvertent. The property seized  
22 is subject to forfeiture to the state under this section regardless  
23 of ownership. Property seized may be recovered by its owner by  
24 depositing with the department or into court a cash bond or  
25 equivalent security equal to the value of the seized property but not  
26 more than one hundred thousand dollars. Such cash bond or security is  
27 subject to forfeiture in lieu of the property. Forfeiture of property  
28 seized under this section is a civil forfeiture against property and  
29 is intended to be a remedial civil sanction.

30 (2) In the event of a seizure of property under this section,  
31 jurisdiction to begin the forfeiture proceedings shall commence upon  
32 seizure. Within fifteen days following the seizure, the seizing  
33 authority shall serve a written notice of intent to forfeit property  
34 on the owner of the property seized and on any person having any  
35 known right or interest in the property seized. Notice may be served  
36 by any method authorized by law or court rule, including service by  
37 certified mail with return receipt requested. Service by mail is  
38 deemed complete upon mailing within the fifteen-day period following  
39 the seizure.

1 (3) Persons claiming a right of ownership or right to possession  
2 of property are entitled to a hearing to contest forfeiture. Such a  
3 claim shall specify the claim of ownership or possession and shall be  
4 made in writing and served on the director within forty-five days of  
5 the seizure. If the seizing authority has complied with notice  
6 requirements and there is no claim made within forty-five days, then  
7 the property shall be forfeited to the state.

8 (4) If any person timely serves the director with a claim to  
9 property, the person shall be afforded an opportunity to be heard as  
10 to the person's claim or right. The hearing shall be before the  
11 director or director's designee, or before an administrative law  
12 judge appointed under chapter 34.12 RCW, except that a person  
13 asserting a claim or right may remove the matter to a court of  
14 competent jurisdiction if the aggregate value of the property seized  
15 is more than five thousand dollars. The department may settle a  
16 person's claim of ownership prior to the administrative hearing.

17 (5) The hearing to contest forfeiture and any subsequent appeal  
18 shall be as provided for in chapter 34.05 RCW, the administrative  
19 procedure act. The seizing authority has the burden to demonstrate  
20 that it had reason to believe the property was held with intent to  
21 violate or was used in violation of this title or rule of the  
22 commission or director. The person contesting forfeiture has the  
23 burden of production and proof by a preponderance of evidence that  
24 the person owns or has a right to possess the property and:

25 (a) That the property was not held with intent to violate or used  
26 in violation of this title; or

27 (b) If the property is a boat, airplane, or vehicle, that the  
28 illegal use or planned illegal use of the boat, airplane, or vehicle  
29 occurred without the owner's knowledge or consent, and that the owner  
30 acted reasonably to prevent illegal uses of such boat, airplane, or  
31 vehicle.

32 (6) A forfeiture of a conveyance encumbered by a perfected  
33 security interest is subject to the interest of the secured party if  
34 the secured party neither had knowledge of nor consented to the act  
35 or omission. No security interest in seized property may be perfected  
36 after seizure.

37 (7) If seized property is forfeited under this section the  
38 department may retain it for official use unless the property is  
39 required to be destroyed, or upon application by any law enforcement  
40 agency of the state, release such property to the agency for the use

1 of enforcing this title, or sell such property(~~(, and deposit the~~  
2 ~~proceeds to the fish and wildlife enforcement reward account created~~  
3 ~~in RCW 77.15.425))~~).

4 (8) By January 31st of each year, the department shall remit to  
5 the state treasurer an amount equal to one hundred percent of the net  
6 proceeds of any property forfeited during the preceding calendar  
7 year. Money remitted shall be deposited in the education legacy trust  
8 account under RCW 83.100.230 for common schools. The value of  
9 forfeited property and net proceeds shall be determined in accordance  
10 with RCW 69.50.505(9).

11 **Sec. 18.** RCW 82.24.145 and 2003 c 25 s 10 are each amended to  
12 read as follows:

13 When property is forfeited under this chapter the department may:

14 (1) Retain the property or any part thereof for official use or  
15 upon application by any law enforcement agency of this state, another  
16 state, or the District of Columbia, or of the United States for the  
17 exclusive use of enforcing the provisions of this chapter or the laws  
18 of any other state or the District of Columbia or of the United  
19 States.

20 (2) Sell the property at public auction to the highest bidder  
21 after due advertisement, but the department before delivering any of  
22 the goods so seized shall require the person to whom the property is  
23 sold to affix the proper amount of stamps. The proceeds of the sale  
24 and all moneys forfeited under this chapter shall be first applied to  
25 the payment of all proper expenses of any investigation leading to  
26 the seizure and of the proceedings for forfeiture and sale, including  
27 expenses of seizure, maintenance of custody, advertising, and court  
28 costs. (~~The balance of the proceeds and all moneys shall be~~  
29 ~~deposited in the general fund of the state.~~) Proper expenses of  
30 investigation includes costs incurred by any law enforcement agency  
31 or any federal, state, or local agency.

32 (3) By January 31st of each year, the department shall remit to  
33 the state treasurer an amount equal to one hundred percent of the net  
34 proceeds of any property forfeited during the preceding calendar  
35 year, minus any amounts applied to the expenses described in  
36 subsection (2) of this section. Money remitted shall be deposited in  
37 the education legacy trust account under RCW 83.100.230 for common  
38 schools. The value of forfeited property and net proceeds shall be  
39 determined in accordance with RCW 69.50.505(9).

1       (4) Notwithstanding the provisions of subsections (1) and (2) of  
2 this section, cigarettes seized for a violation of RCW 82.24.035 or  
3 70.158.030(3) shall be destroyed. For the purposes of this subsection  
4 (~~((3))~~) (4) "cigarettes" has the same meaning as provided in RCW  
5 70.158.020(3).

6       **Sec. 19.** RCW 82.26.240 and 2005 c 180 s 21 are each amended to  
7 read as follows:

8       (1) In all cases of seizure of any tobacco products made subject  
9 to forfeiture under this chapter, the department or board shall  
10 proceed as provided in RCW 82.24.135.

11       (2) When tobacco products are forfeited under this chapter, the  
12 department or board may:

13       (a) Retain the property for official use or upon application by  
14 any law enforcement agency of this state, another state, or the  
15 District of Columbia, or of the United States for the exclusive use  
16 of enforcing this chapter or the laws of any other state or the  
17 District of Columbia or of the United States; or

18       (b) Sell the tobacco products at public auction to the highest  
19 bidder after due advertisement. Before delivering any of the goods to  
20 the successful bidder, the department or board shall require the  
21 purchaser to pay the proper amount of any tax due. The proceeds of  
22 the sale shall be first applied to the payment of all proper expenses  
23 of any investigation leading to the seizure and of the proceedings  
24 for forfeiture and sale, including expenses of seizure, maintenance  
25 of custody, advertising, and court costs. (~~The balance of the~~  
26 ~~proceeds and all money shall be deposited in the general fund of the~~  
27 ~~state.~~) Proper expenses of investigation include costs incurred by  
28 any law enforcement agency or any federal, state, or local agency.

29       (3) By January 31st of each year, the department or board shall  
30 remit to the state treasurer an amount equal to one hundred percent  
31 of the net proceeds of any property forfeited during the preceding  
32 calendar year, minus any amounts applied to the expenses described in  
33 subsection (2)(b) of this section. Money remitted shall be deposited  
34 in the education legacy trust account under RCW 83.100.230 for common  
35 schools. The value of forfeited property and net proceeds shall be  
36 determined in accordance with RCW 69.50.505(9).

37       (4) The department or the board may return any property seized  
38 under the provisions of this chapter when it is shown that there was  
39 no intention to violate the provisions of this chapter. When any

1 property is returned under this section, the department or the board  
2 may return the property to the parties from whom they were seized if  
3 and when such parties have paid the proper amount of tax due under  
4 this chapter.

5 **Sec. 20.** RCW 82.32.670 and 2013 c 309 s 3 are each amended to  
6 read as follows:

7 (1)(a) Automated sales suppression devices, phantom-ware,  
8 electronic cash registers or point of sale systems used with  
9 automated sales suppression devices or phantom-ware, and any property  
10 constituting proceeds traceable to any violation of RCW 82.32.290(4)  
11 are considered contraband and are subject to seizure and forfeiture.

12 (b) Property subject to forfeiture under (a) of this subsection  
13 (1) may be seized by any agent of the department authorized to assess  
14 or collect taxes, or law enforcement officer of this state, upon  
15 process issued by any superior court or district court having  
16 jurisdiction over the property. Seizure without process may be made  
17 if:

18 (i) The seizure is incident to an arrest or a search under a  
19 search warrant; or

20 (ii) The department or the law enforcement officer has probable  
21 cause to believe that the property was used or is intended to be used  
22 in violation of RCW 82.32.290(4) and exigent circumstances exist  
23 making procurement of a search warrant impracticable.

24 (2) Forfeiture authorized by this section is deemed to have  
25 commenced by the seizure. Notice of seizure must be given to the  
26 department if the seizure is made by a law enforcement officer  
27 without the presence of any agent of the department. The department  
28 must cause notice of the seizure and intended forfeiture to be served  
29 on the owner of the property seized, if known, and on any other  
30 person known by the department to have a right or interest in the  
31 seized property. Such service must be made within fifteen days  
32 following the seizure or the department's receipt of notification of  
33 the seizure. The notice may be served by any method authorized by law  
34 or court rule, by certified mail with return receipt requested, or  
35 electronically in accordance with RCW 82.32.135. Service by certified  
36 mail or electronic means is deemed complete upon mailing the notice,  
37 electronically sending the notice, or electronically notifying the  
38 person or persons entitled to the notice that the notice is available  
39 to be accessed by the person or persons, within the fifteen-day

1 period following the seizure or the department's receipt of  
2 notification of the seizure.

3 (3) If no person notifies the department in writing of the  
4 person's claim of lawful ownership or right to lawful possession of  
5 the item or items seized within thirty days of the date of service of  
6 the notice of seizure and intended forfeiture, the item or items  
7 seized are deemed forfeited.

8 (4)(a) If any person notifies the department, in writing, of the  
9 person's claim of lawful ownership or lawful right to possession of  
10 the item or items seized within thirty days of the date of service of  
11 the notice of seizure and intended forfeiture, the person or persons  
12 must be afforded a reasonable opportunity to be heard as to the  
13 claim. The hearing must be before the director or the director's  
14 designee. A hearing and any administrative or judicial review is  
15 governed by chapter 34.05 RCW. The burden of proof by a preponderance  
16 of the evidence is upon the person claiming to be the lawful owner or  
17 the person claiming to have the lawful right to possession of the  
18 item or items seized.

19 (b) The department must return the item or items to the claimant  
20 as soon as possible upon a determination that the claimant is the  
21 present lawful owner or is lawfully entitled to possession of the  
22 item or items seized.

23 (5) When property is sought to be forfeited on the ground that it  
24 constitutes proceeds traceable to a violation of RCW 82.32.290(4),  
25 the department must prove by a preponderance of the evidence that the  
26 property constitutes proceeds traceable to a violation of RCW  
27 82.32.290(4).

28 (6)(a) When property forfeited under this section, other than  
29 proceeds traceable to a violation of RCW 82.32.290(4), is no longer  
30 required for evidentiary purposes, the department may:

- 31 (i) Destroy or have the property destroyed;  
32 (ii) Retain the property for training or other official purposes;  
33 or

34 (iii) Loan or give the property to any law enforcement or tax  
35 administration agency of any state, political subdivision or  
36 municipal corporation of a state, or the United States for training  
37 or other official purposes. For purposes of this subsection  
38 (6)(a)(iii), "state" has the same meaning as in RCW 82.04.462.

39 (b) When proceeds traceable to a violation of RCW 82.32.290(4)  
40 forfeited under this section are no longer required for evidentiary

1 purposes, they must be deposited into the (~~general fund~~) education  
2 legacy trust account under RCW 83.100.230 for common schools. By  
3 January 31st of each year, each seizing agency shall remit to the  
4 state treasurer an amount equal to one hundred percent of the net  
5 proceeds of any property forfeited during the preceding calendar  
6 year. Money remitted shall be deposited in the education legacy trust  
7 account under RCW 83.100.230 for common schools. The value of  
8 forfeited property and net proceeds shall be determined in accordance  
9 with RCW 69.50.505(9).

10 (7) The definitions in this subsection apply to this section:

11 (a) "Automated sales suppression device" means a software program  
12 that falsifies the electronic records of electronic cash registers or  
13 other point of sale systems, including transaction data and  
14 transaction reports. The term includes the software program, any  
15 device that carries the software program, or an internet link to the  
16 software program.

17 (b) "Electronic cash register" means a device that keeps a  
18 register or supporting documents through the means of an electronic  
19 device or computer system designed to record transaction data for the  
20 purpose of computing, compiling, or processing sales transaction data  
21 in whatever manner.

22 (c) "Phantom-ware" means a programming option that is hidden,  
23 preinstalled, or installed-at-a-later-time in the operating system of  
24 an electronic cash register or other point of sale device, or  
25 hardwired into the electronic cash register or other point of sale  
26 device, and that can be used to create a virtual second till or may  
27 eliminate or manipulate transaction reports that may or may not be  
28 preserved in digital formats to represent the true or manipulated  
29 record of transactions in the electronic cash register or other point  
30 of sale device.

31 (d) "Transaction data" means information about sales  
32 transactions, including items purchased by a customer, the price for  
33 each item, a taxability determination for each item, a segregated tax  
34 amount for each of the taxed items, the amount of cash or credit  
35 tendered, the net amount returned to the customer in change, the date  
36 and time of the purchase, the name, address, and identification  
37 number of the vendor, and the receipt or invoice number of the  
38 transaction.

39 (e) "Transaction reports" means a report that includes  
40 information associated with sales transactions, taxes collected,

1 media totals, and discount voids at an electronic cash register that  
2 can be printed on cash register tape at the end of a day or shift, or  
3 a report documenting every action at an electronic cash register or  
4 other point of sale device and that is stored electronically.

5 **Sec. 21.** RCW 82.38.370 and 2013 c 225 s 134 are each amended to  
6 read as follows:

7 ~~((When property is forfeited under this chapter))~~ By January 31st  
8 of each year, the state patrol or the department ~~((may use the~~  
9 ~~proceeds of the sale and all moneys forfeited for the payment))~~ shall  
10 remit to the state treasurer an amount equal to one hundred percent  
11 of the net proceeds of any property forfeited during the preceding  
12 calendar year, minus the cost of all proper expenses of any  
13 investigation leading to the seizure and of the proceedings for  
14 forfeiture and sale, including expenses of seizure, maintenance of  
15 custody, advertising, and court costs. Proper expenses of  
16 investigation include costs incurred by a law enforcement agency or a  
17 federal, state, or local agency. Money remitted shall be deposited in  
18 the education legacy trust account under RCW 83.100.230 for common  
19 schools. The value of forfeited property and net proceeds shall be  
20 determined in accordance with RCW 69.50.505(9).

21 NEW SECTION. **Sec. 22.** Except for section 5 of this act, this  
22 act takes effect August 1, 2017.

23 NEW SECTION. **Sec. 23.** Section 4 of this act expires April 1,  
24 2018.

25 NEW SECTION. **Sec. 24.** Section 5 of this act takes effect April  
26 1, 2018.

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